

20 Am. Jur. 2d Credit Cards and Charge Accounts Summary

American Jurisprudence, Second Edition | May 2021 Update

Credit Cards and Charge Accounts

Janice Holben, J.D.

[Correlation Table](#)

Summary

Scope:

This article discusses credit cards and charge accounts with discussion as to statutory regulation thereof, including both civil regulation and criminal offenses; rights, duties, and liabilities of the issuer and cardholder; and matters of practice and procedure related thereto.

Federal Aspects:

In addition to the Consumer Credit Protection Act provisions, commonly known as the Truth in Lending Act, other federal statutes designed to protect holders of credit cards and charge accounts include provisions proscribing mail or wire fraud and interstate transportation of stolen securities.

Treated Elsewhere:

Consumer credit legislation, generally, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 301 to 304](#)

Consumer Credit Protection Act and Truth in Lending Act provisions, generally, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 1 to 14](#)

Credit advertising, generally, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 90 to 95](#)

Credit insurance and credit life insurance, generally, see [Am. Jur. 2d, Consumer and Borrower Protection § 27](#), [Am. Jur. 2d, Insurance §§ 6, 229, 512](#)

Credit reporting agencies, generally, see [Am. Jur. 2d, Collection and Credit Agencies §§ 35 to 46](#)

Embezzlement, credit card as subject of, see [Am. Jur. 2d, Embezzlement § 15](#)

Equal Credit Opportunity Act, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 147 to 168](#)

Extortionate credit transactions, generally, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 206 to 209](#)

Rate of interest, regulation of, and usury, generally, see [Am. Jur. 2d, Interest and Usury §§ 45 to 53, 81 to 306, 317 to 345](#)

Uniform Consumer Credit Code, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 305 to 414](#)

Research References:

Westlaw Databases

[All Federal Cases \(ALLFEDS\)](#)
[All State Cases \(ALLSTATES\)](#)
[American Law Reports \(ALR\)](#)
[West's A.L.R. Digest \(ALRDIGEST\)](#)
[American Jurisprudence 2d \(AMJUR\)](#)
[American Jurisprudence Legal Forms 2d \(AMJUR-LF\)](#)
[American Jurisprudence Proof of Facts \(AMJUR-POF\)](#)
[American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)
[American Jurisprudence Trials \(AMJUR-TRIALS\)](#)
[Uniform Laws Annotated \(ULA\)](#)
[United States Code Annotated \(USCA\)](#)

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A. Definitions

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West's A.L.R. Digest, Consumer Credit 8.1

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I. Definitions and Nature of Credit Card and Credit Card Transactions

A. Definitions

§ 1. Credit card

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1

The term "credit card" is defined, under the Truth in Lending Act (TILA), as meaning any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.¹ The TILA regulation, known as Regulation Z, similarly defines a "credit card" as any card, plate, or other single credit device that may be used from time to time to obtain credit.²

Under the Uniform Consumer Credit Code, a "credit card" is defined as a card or device issued under an arrangement pursuant to which a card issuer gives to a cardholder the privilege of obtaining credit from the card issuer or other person in purchasing or leasing property or services, obtaining loans, or otherwise.³

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Footnotes

- ¹ 15 U.S.C.A. § 1602(l).
- ² 12 C.F.R. § 226.2(a)(15)(i).
- ³ Unif. Consumer Credit Code § 1.301(17).

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A. Definitions

§ 2. Credit card—Types of credit card

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 8.1

Under the Truth in Lending Act, a credit card may take the form of an "accepted credit card," which is defined as any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.¹ A credit card, under the Truth in Lending Act, also may take the form of a "college affinity card," which is a credit card issued by a credit card issuer under an open-end consumer credit plan in conjunction with an agreement between the issuer and an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, under which such cards are issued to college students who have an affinity with such institution or organization, and the creditor has agreed to donate a portion of the proceeds of the credit card to the institution, organization, or foundation (including a lump sum or one-time payment of money for access); the creditor has agreed to offer discounted terms to the consumer; or the credit card bears the name, emblem, mascot, or logo of such institution, organization, or foundation, or other words, pictures, or symbols readily identified with such institution, organization, or foundation.²

Under the Uniform Consumer Credit Code, a credit card may take the form of a lender credit card³ or a seller credit card.⁴ A "lender credit card" is defined as a credit card issued by a supervised lender,⁵ that is a person authorized to make or take assignments of supervised loans, under an issued license issued or as a supervised financial organization.⁶ A "seller credit card" is defined as either a credit card issued primarily for the purpose of giving the cardholder the privilege of using the card to purchase or lease property or services from the card issuer, persons related to the card issuer, or persons licensed or franchised to do business under the card issuer's business or trade name or designation, or both from any of these persons and from other persons;⁷ or a credit card issued by a person except a supervised lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from at least 100 persons not related to the card issuer.⁸

Footnotes

- 1 15 U.S.C.A. § 1602(m).
- 2 15 U.S.C.A. § 1637(r)(1)(A).
- 3 Unif. Consumer Credit Code § 1.301(24).
- 4 Unif. Consumer Credit Code § 1.301(39).
- 5 Unif. Consumer Credit Code § 1.301(24).
- 6 Unif. Consumer Credit Code § 1.301(42).
- 7 Unif. Consumer Credit Code § 1.301(39)(a).
- 8 Unif. Consumer Credit Code § 1.301(39)(b).

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A. Definitions

§ 3. Charge card

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1

The term "charge card" is defined, under the Truth in Lending Act (TILA), as meaning a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge.¹ The TILA regulation, known as Regulation Z, defines "charge card" as a credit card on an account for which no periodic rate is used to compute a finance charge.²

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Footnotes

¹ 15 U.S.C.A. § 1637(c)(4)(E).

² 12 C.F.R. § 226.2(a)(15)(iii).

As to the definition of a "credit card," see § 1.

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A. Definitions

§ 4. Cardholder

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1

The term "cardholder" is defined, under the Truth in Lending Act (TILA), as meaning any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.¹ The TILA regulation, known as Regulation Z, similarly defines a "cardholder" as a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person.² The Uniform Consumer Credit Code likewise defines a "cardholder" as a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance to or use of the card by another person.³

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Footnotes

- ¹ 15 U.S.C.A. § 1602(n).
- ² 12 C.F.R. § 226.2(a)(8).
- ³ Unif. Consumer Credit Code § 1.301(8).

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A. Definitions

§ 5. Card issuer

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 8.1

The term "card issuer" is defined, under the Truth in Lending Act (TILA),¹ as well as the TILA regulation, known as Regulation Z,² as meaning any person who issues a credit card, or the agent of such person with respect to such card. The Uniform Consumer Credit Code similarly defines a "card issuer" as a person who issues a credit card.³

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Footnotes

- ¹ 15 U.S.C.A. § 1602(o).
- ² 12 C.F.R. § 226.2(a)(7).
- ³ Unif. Consumer Credit Code § 1.301(7).

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West's Key Number Digest, Consumer Credit 🔑8.1

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B. Nature of Credit Card and Transactions Pursuant to Credit Card

§ 6. Nature of credit card

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 8.1

Basically, a credit card is nothing more than an indication to sellers of commodities that the person who has received a credit card from the card issuer has a satisfactory credit rating, and that if credit is extended, the issuer of the credit card will pay (or see to it that the seller of the commodity receives payment) for the merchandise delivered.¹

In a two-party credit card arrangement, a consumer uses a store's credit card to purchase goods or services at that establishment, and such accounts involve a direct sale on credit between the merchant and the consumer.²

A "bank credit card" is a three-party, three-part agreement between a bank, a consumer, and a merchant.³ The original agreement is between the consumer/cardholder and the issuing bank, and this agreement usually contains a detailed description of each party's rights, duties, and liabilities, such as the consumer's agreement to pay the bank for all charges incurred through the use of the card.⁴ The second part of this three-party arrangement is between the issuer bank and the merchant, and the merchant may be required to keep a minimum balance, to present sales slips to the bank within a certain number of days, and to exercise due care in accepting the card from the consumer.⁵ The third agreement is between the consumer and the merchant.⁶

Credit cards have been variously viewed as negotiable instruments,⁷ mere identification cards,⁸ broad contracts of guaranty,⁹ or assignments.¹⁰ The three-party, bank credit card type of transaction has been analogized to the letter of credit, and since letters of credit are governed by ordinary contract law, courts have stated that many principles of contract law apply to a transaction involving a bank credit card.¹¹

Footnotes

- 1 Novack v. Cities Service Oil Co., 149 N.J. Super. 542, 374 A.2d 89 (Law Div. 1977), judgment aff'd, 159 N.J. Super. 400, 388 A.2d 264 (App. Div. 1978).
- 2 Preston State Bank v. Jordan, 692 S.W.2d 740 (Tex. App. Fort Worth 1985).
- 3 Preston State Bank v. Jordan, 692 S.W.2d 740 (Tex. App. Fort Worth 1985).
- 4 Preston State Bank v. Jordan, 692 S.W.2d 740 (Tex. App. Fort Worth 1985).
- 5 Preston State Bank v. Jordan, 692 S.W.2d 740 (Tex. App. Fort Worth 1985).
- 6 Preston State Bank v. Jordan, 692 S.W.2d 740 (Tex. App. Fort Worth 1985).
- 7 Franklin Nat. Bank of Franklin Square v. Kass, 19 Misc. 2d 280, 184 N.Y.S.2d 783 (Sup 1959).
- 8 Lit Bros. v. Haines, 98 N.J.L. 658, 121 A. 131 (N.J. Sup. Ct. 1923).
- 9 Gulf Refining Co. v. Williams Roofing Co., 208 Ark. 362, 186 S.W.2d 790, 158 A.L.R. 754 (1945).
- 10 Gulf Refining Co. v. Williams Roofing Co., 208 Ark. 362, 186 S.W.2d 790, 158 A.L.R. 754 (1945).
- 11 Preston State Bank v. Jordan, 692 S.W.2d 740 (Tex. App. Fort Worth 1985).

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B. Nature of Credit Card and Transactions Pursuant to Credit Card

§ 7. Transaction pursuant to credit card

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1

Under the Uniform Consumer Credit Code (UCCC), a transaction is pursuant to a credit card only if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or electronic methods, or in any other manner.¹ On the other hand, a transaction is not pursuant to a credit card if the card or device is used solely in that transaction to: (1) identify the cardholder or evidence his or her creditworthiness and credit is not obtained according to the terms of the arrangement; (2) obtain a guarantee of payment from the cardholder's deposit account, whether or not the payment results in a credit extension to the cardholder by the card issuer; or (3) effect an immediate transfer of funds from the cardholder's deposit account by electronic or other means, whether or not the transfer results in a credit extension to the cardholder by the card issuer.²

The UCCC classifies a seller credit card transaction as a consumer credit sale,³ and a bank or lender credit card transaction as a consumer loan.⁴

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Footnotes

- ¹ [Unif. Consumer Credit Code § 1.301\(17\).](#)
- ² [Unif. Consumer Credit Code § 1.301\(17\).](#)
- ³ [Unif. Consumer Credit Code § 1.301\(12\)\(a\)\(i\).](#)
- ⁴ [Unif. Consumer Credit Code § 1.301\(25\)\(a\)\(ii\).](#)
As to the nature of a bank credit card, see § 6.

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A. Civil Aspects

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A.L.R. Index, Credit Cards

A.L.R. Index, Truth in Lending

West's A.L.R. Digest, Consumer Credit 🔑 8.1, 30, 32, 34

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II. Statutory Regulation


A. Civil Aspects

1. State Law and Uniform Consumer Credit Code

§ 8. State law

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1

States may have credit card acts designed to promote consumer protection.¹ Federal law, however, preempts state law in specific areas related to the regulation of credit cards.²

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Footnotes

¹ [Florez v. Linens 'N Things, Inc.](#), 108 Cal. App. 4th 447, 133 Cal. Rptr. 2d 465 (4th Dist. 2003).

² [ALBANK, FSB v. Foland](#), 177 Misc. 2d 569, 676 N.Y.S.2d 461 (N.Y. City Ct. 1998).

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II. Statutory Regulation


A. Civil Aspects

1. State Law and Uniform Consumer Credit Code

§ 9. Uniform Consumer Credit Code

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1

The Uniform Consumer Credit Code (UCCC) contains specific maximum finance charge provisions for consumer credit sales,¹ which include seller credit card transactions,² and consumer loans,³ which include bank or lender credit card transactions.⁴ The UCCC also contains provisions on additional charges on consumer credit transactions.⁵

The UCCC carries its own disclosure provisions,⁶ but it also requires compliance with the Federal Truth in Lending Act.⁷ The Federal Truth in Lending Act is deemed to apply to a credit transaction that is a consumer credit transaction under the UCCC, notwithstanding its inclusion in a class of transactions within the state which, by regulation of the Board of Governors of the Federal Reserve System, is exempt from the Federal Truth in Lending Act.⁸ The purpose of this provision is to impose on creditors in all transactions covered by the UCCC the duty to disclose as though the Federal Truth in Lending Act applies, even where it does not.⁹

Under the UCCC, if an issuing bank desires unilaterally to change the terms of a bank credit card arrangement by instituting a rate increase, for example, it must give to the consumer at least two written notices in advance of the change, and the first notice must be given at least three months before the effective date of the change.¹⁰ The UCCC also prohibits cognovit clauses,¹¹ as well as assignments of earnings clauses,¹² and places limitations on provisions as to attorney's fees¹³ and default charges,¹⁴ in bank card agreements.

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Footnotes

- 1 Unif. Consumer Credit Code §§ 2.201, 2.202.
- 2 § 7.
- 3 Unif. Consumer Credit Code § 2.401.
- 4 § 7.
- 5 Unif. Consumer Credit Code § 2.501.
- 6 Unif. Consumer Credit Code §§ 3.201 to 3.209.
As to UCCC disclosure provisions, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 331 to 339](#).
- 7 Unif. Consumer Credit Code § 3.201(1).
- 8 Unif. Consumer Credit Code § 3.201(2).
As to the relation of the UCCC to the Truth in Lending Act, see [Am. Jur. 2d, Consumer and Borrower Protection § 331](#).
- 9 Unif. Consumer Credit Code § 3.201, Comment.
- 10 Unif. Consumer Credit Code § 3.205(1).
- 11 Unif. Consumer Credit Code § 3.306.
- 12 Unif. Consumer Credit Code § 3.305.
- 13 Unif. Consumer Credit Code § 2.507.
- 14 Unif. Consumer Credit Code § 3.402.

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law

a. Truth in Lending Act

(i) In General

§ 10. Generally

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32, 34

Trial Strategy

[Class Action For Failure To Disclose Under The Truth-In-Lending Act And Regulation Z, 76 Am. Jur. Proof of Facts 3d 193](#)
[Violation of the Truth-In-Lending Act and Regulation Z, 73 Am. Jur. Proof of Facts 3d 275](#)

The Truth in Lending Act (TILA)¹ and its implementing regulation, known as Regulation Z, generally apply to each individual or business that offers or extends credit when four conditions are met: (1) the credit is offered or extended to consumers; (2) the offering or extension of credit is done regularly; (3) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (4) the credit is primarily for personal, family, or household purposes;² TILA thus applies to credit card issuers.³ When a credit card is involved, however, certain TILA provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.⁴

TILA requires certain disclosures, both initially⁵ and in periodic billing statements,⁶ from the issuer of a credit card account under an open-end consumer credit plan. Congress passed TILA to promote consumers' informed use of credit by requiring meaningful disclosure of credit terms,⁷ and thus the purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various terms available to him or her and avoid the uninformed use of credit and to protect the consumer against inaccurate and unfair credit billing and credit card practices.⁸ TILA does not purport to make unlawful every practice relating to credit cards that anyone might describe as unfair, but only those expressly covered in its substantive sections; thus, for example, a credit cardholder's allegation that an issuing company has a secret marketing strategy of waiving annual fees in whole or in part whenever a cardholder complains about the fee or threatens to cancel the card fails to state a claim under TILA.⁹

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Footnotes

- 1 15 U.S.C.A. §§ 1601 to 1667f.
- 2 12 C.F.R. § 226.1(c)(1).
- 3 Am. Jur. 2d, Consumer and Borrower Protection § 10.
- 4 12 C.F.R. § 226.1(c)(2).
- 5 15 U.S.C.A. § 1637(a).
When a card issuer makes the necessary disclosures before the credit card is activated, before any fees are incurred and before any charges are made to the new account, the card issuer has satisfied the initial disclosure requirements. *Muro v. Target Corp.*, 580 F.3d 485, 74 Fed. R. Serv. 3d 502 (7th Cir. 2009).
- 6 15 U.S.C.A. § 1637(b).
- 7 *Chase Bank USA, N.A. v. McCoy*, 562 U.S. 195, 131 S. Ct. 871, 178 L. Ed. 2d 716, 67 A.L.R. Fed. 2d 721 (2011).
- 8 Am. Jur. 2d, Consumer and Borrower Protection § 3.
- 9 *Litwin v. American Exp. Co.*, 838 F. Supp. 855 (S.D. N.Y. 1993).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law

a. Truth in Lending Act

(i) In General

§ 11. Limitations on rate, fee, and finance charge increases to outstanding balances

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

In the case of any credit card account under an open-end consumer credit plan, no credit card issuer ordinarily may increase any annual percentage rate, fee, or finance charge applicable to any outstanding balance.¹ Such prohibition, however, does not apply to:

- (1) an increase in an annual percentage rate upon the expiration of a specified period of time, provided that prior to commencement of that period, the credit card issuer disclosed to the credit cardholder, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period; the increased annual percentage rate does not exceed such disclosed rate; and the increased annual percentage rate is not applied to transactions that occurred prior to commencement of the period;²
- (2) an increase in a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the credit card issuer and is available to the general public;³
- (3) an increase due to the completion of a workout or temporary hardship arrangement by the credit cardholder or the failure of the cardholder to comply with the terms of a workout or temporary hardship arrangement, provided that the annual percentage rate, fee, or finance charge applicable to a category of transactions following any such increase does not exceed the rate, fee, or finance charge that applied to that category of transactions prior to commencement of the arrangement, and the credit card

issuer has provided the cardholder, prior to the commencement of such arrangement, with clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure),⁴ or

- (4) an increase due solely to the fact that a minimum payment by the credit cardholder has not been received by the credit card issuer within 60 days after the due date for such payment, provided that the credit card issuer must include, together with the required notice of such increase, a clear and conspicuous written statement of the reason for the increase and that the increase will terminate not later than six months after the date on which it is imposed, if the credit card issuer receives the required minimum payments on time from the cardholder during that period; and must terminate such increase not later than six months after the date on which it is imposed, if the credit card issuer receives the required minimum payments on time during that period.⁵

Except in the case of an increase described above, no increase in any annual percentage rate, fee, or finance charge on any credit card account under an open-end consumer credit plan will be effective before the end of the one-year period beginning on the date on which the account is opened.⁶ Furthermore, no increase in any annual percentage rate applicable to a credit card account under an open-end consumer credit plan that is a promotional rate will be effective before the end of the six-month period beginning on the date on which the promotional rate takes effect, subject to such reasonable exceptions as the Bureau of Consumer Financial Protection may establish, by rule.⁷

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Footnotes

- 1 15 U.S.C.A. § 1666i-1(a).
As to the definition of "outstanding balance," see § 26.
- 2 15 U.S.C.A. § 1666i-1(b)(1).
- 3 15 U.S.C.A. § 1666i-1(b)(2).
- 4 15 U.S.C.A. § 1666i-1(b)(3).
- 5 15 U.S.C.A. § 1666i-1(b)(4).
As to the required notice of a rate increase or change, see § 12.
- 6 15 U.S.C.A. § 1666i-2(a).
- 7 15 U.S.C.A. § 1666i-2(b).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(i) In General

§ 12. Notice of rate increase and other changes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

In the case of any credit card account under an open-end consumer credit plan, a credit card issuer must provide to a credit cardholder a written notice of an increase in an annual percentage rate, except in specified cases,¹ not later than 45 days prior to the effective date of the increase.² Similarly, in the case of any credit card account under an open-end consumer credit plan, a credit card issuer must provide to a credit cardholder a written notice of any significant change in the terms of the cardholder agreement between the issuer and the cardholder (including an increase in any fee or finance charge), not later than 45 days prior to the effective date of the change.³

A required notice of an interest rate increase or other significant change must be made in a clear and conspicuous manner, and must contain a brief statement of the right of the cardholder to cancel the account pursuant to rules established by the Bureau of Consumer Financial Protection before the effective date of the subject rate increase or other change.⁴ The closure or cancellation of an account by the credit cardholder will not constitute a default under an existing cardholder agreement, and will not trigger an obligation to immediately repay the obligation in full or through a method that is less beneficial to the cardholder than one of the methods statutorily prescribed, or the imposition of any other penalty or fee.⁵

Observation:

If a credit card issuer increases the annual percentage rate applicable to a credit card account under an open-end consumer credit plan, based on factors including the credit risk of the credit cardholder, market conditions, or other factors, the credit card issuer must consider changes in such factors in subsequently determining whether to reduce the annual percentage rate for such cardholder.⁶ The credit card issuer is required to not less frequently than once every six months, review accounts as to which the annual percentage rate has been increased since January 1, 2009, to assess whether such factors have changed (including whether any risk has declined),⁷ and reduce the annual percentage rate previously increased when a reduction is indicated by the review.⁸ Any reduction in an annual percentage rate will apply to any outstanding balances to which the increased rate has been applied, and new transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.⁹

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Footnotes

- 1 15 U.S.C.A. § 1666i-1(b)(1) to (3), discussed in § 11.
- 2 15 U.S.C.A. § 1637(i)(1).
- 3 15 U.S.C.A. § 1637(i)(2).
- 4 15 U.S.C.A. § 1637(i)(3).
- 5 15 U.S.C.A. § 1637(i)(4).
- As to the methods of repayment of an outstanding balance, see § 26.
- 6 15 U.S.C.A. § 1665c(a).
- 7 15 U.S.C.A. § 1665c(b)(2).
- 8 15 U.S.C.A. § 1665c(b)(3).
- 9 12 C.F.R. § 226.59(a)(2)(ii).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law

a. Truth in Lending Act

(i) In General

§ 13. Opt-in requirement for over-the-limit transactions where fees imposed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

In the case of any credit card account under an open-end consumer credit plan under which an over-the-limit fee may be imposed by the credit card issuer for any extension of credit in excess of the amount of credit authorized to be extended under such account, no such fee may be charged, unless the credit cardholder has expressly elected to permit the issuer, with respect to such account, to complete transactions involving the extension of credit under such account in excess of the amount of credit authorized.¹ No election by a credit cardholder may take effect, however, unless the cardholder, before making such election, received a notice from the credit card issuer of any over-the-limit fee in the form and manner, and at the time, determined by the Bureau of Consumer Financial Protection (Bureau).² If the credit cardholder makes such election, the credit card issuer must provide notice to the cardholder of the right to revoke the election, in the form prescribed by the Bureau, in any periodic statement that includes notice of the imposition of an over-the-limit fee during the period covered by the statement.³

A credit cardholder may make or revoke the election orally, electronically, or in writing, pursuant to regulations prescribed by the Bureau.⁴ The Bureau must prescribe regulations to ensure that the same options are available for both making and revoking such election.⁵ A cardholder may make the election at any time, and such election will be effective until the election is revoked in the prescribed manner.⁶

If two or more consumers are jointly liable on a credit card account under an open-end consumer credit plan, the card issuer must treat the affirmative consent of any of the joint consumers to an over-the-limit fee as affirmative consent for that account.⁷

Similarly, the card issuer must treat a revocation of consent by any of the joint consumers as revocation of consent for that account.⁸

With respect to a credit card account under an open-end consumer credit plan, an over-the-limit fee may be imposed only once during a billing cycle if the credit limit on the account is exceeded, and an over-the-limit fee, with respect to such excess credit, may be imposed only once in each of the two subsequent billing cycles, unless the cardholder has obtained an additional extension of credit in excess of such credit limit during any such subsequent cycle or the cardholder reduces the outstanding balance below the credit limit as of the end of such billing cycle.⁹

Notwithstanding a cardholder's affirmative consent to a card issuer's payment of over-the-limit transactions on a credit card account, a card issuer may not impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the cardholder's available credit following the crediting of the cardholder's payment;¹⁰ may not condition the amount of a cardholder's credit limit on the cardholder affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service;¹¹ and may not impose an over-the-limit fee or charge for a billing cycle if a cardholder exceeds a credit limit solely because of fees or interest charged by the card issuer to the cardholder's account during that billing cycle.¹²

Observation:

A credit card issuer is not prohibited from completing an over-the-limit transaction, provided that a credit cardholder who has not made a valid election to permit the issuer to complete such a transaction, is not charged an over-the-limit fee for such transaction.¹³

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Footnotes

- 1 15 U.S.C.A. § 1637(k)(1).
- 2 15 U.S.C.A. § 1637(k)(2).
As to the content of such notice, see 12 C.F.R. § 226.56(e).
- 3 15 U.S.C.A. § 1637(k)(2).
- 4 15 U.S.C.A. § 1637(k)(3).
- 5 15 U.S.C.A. § 1637(k)(3).
- 6 15 U.S.C.A. § 1637(k)(4).
- 7 12 C.F.R. § 226.56(f).
- 8 12 C.F.R. § 226.56(f).
- 9 15 U.S.C.A. § 1637(k)(7).
- 10 12 C.F.R. § 226.56(j)(2).
- 11 12 C.F.R. § 226.56(j)(3).
- 12 12 C.F.R. § 226.56(j)(4).
- 13 15 U.S.C.A. § 1637(k)(6).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(i) In General

§ 14. Required approval to increase credit lines on certain joint accounts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

No increase may be made in the amount of credit authorized to be extended under a credit card account for which a parent, legal guardian, or spouse of the consumer, or any other individual has assumed joint liability for debts incurred by the consumer in connection with the account before the consumer attains the age of 21, unless that parent, guardian, or spouse approves in writing, and assumes joint liability for, such increase.¹

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¹ [15 U.S.C.A. § 1637\(p\)](#).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(i) In General

§ 15. Credit to account of cardholder for return of goods

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

Forms

[Am. Jur. Pleading and Practice Forms, Truth in Lending and Consumer Credit Protection § 122](#) (Complaint, petition, or declaration—Allegation—Failure of credit card issuer to credit customer's account on receipt of refund statement)

With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debt for services which were the subject of such sale, the seller must promptly transmit (within seven business days from accepting the return or forgiving the debt)¹ to the credit card issuer, a credit statement with respect thereto.² The credit card issuer then must credit the account of the credit cardholder for the amount of the transaction,³ within three business days from receipt of the credit statement.⁴

Observation:

A credit cardholder fails to state a claim for relief against a credit card issuer in alleging that it failed to credit the cardholder with an insurance charge upon the cancellation or change of a flight ticket in the absence of an allegation that the seller of the ticket accepted the return of insurance and transmitted a credit statement to the card issuer.⁵

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Footnotes

- 1 12 C.F.R. § 226.12(e)(1).
- 2 15 U.S.C.A. § 1666e.
- 3 15 U.S.C.A. § 1666e.
- 4 12 C.F.R. § 226.12(e)(2).
- 5 *Lifschitz v. American Exp. Co.*, 560 F. Supp. 458 (E.D. Pa. 1983).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(i) In General

§ 16. Offset of cardholder's indebtedness with funds deposited with issuer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

Forms

[Am. Jur. Pleading and Practice Forms, Truth in Lending and Consumer Credit Protection § 123](#) (Complaint, petition, or declaration—Allegation—Wrongful offset of credit card account with checking or savings account)

A credit card issuer may not take any action to offset a credit cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in the cardholder's open-end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account,¹ and such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.² Such prohibition, however, does not alter or affect the right under state law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.³

CUMULATIVE SUPPLEMENT

Cases:

Once holder of depository account and credit card issued by credit union made initial showing that credit union withdrew her funds on deposit to pay her credit card debt, in support of her claim that credit union's practice of deducting funds owed on credit card bills from holders' depository accounts violated anti-offset provisions of TILA and Massachusetts Consumer Credit Cost Disclosure Act (MCCCDCA), burden shifted to credit union to prove that offset-type transaction actually involved valid security interest. Truth in Lending Act § 169, [15 U.S.C.A. § 1666h\(a\)](#); [12 C.F.R. § 226.12\(d\)\(2\)](#); [Mass. Gen. Laws Ann. ch. 140D, § 1 et seq](#); [209 Mass. Code Regs. 32.12\(4\)](#). [Martino v. American Airlines Federal Credit Union](#), 121 F. Supp. 3d 277 (D. Mass. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [15 U.S.C.A. § 1666h\(a\)\(1\)](#).
There was no evidence that a federally chartered credit union had a security interest in the customers' deposit funds, so as to avoid liability in the customers' action alleging violations of the Truth in Lending Act based on the credit union's practice of using funds from the customers' checking and savings accounts to offset debt that the customers had incurred on their credit card accounts, where the documents on which the credit union relied for its purported security interest were plainly inadequate, as the default provision of the credit card agreement said absolutely nothing about granting the credit union a security interest in a borrower's deposit accounts, and there was no other indicia of intent to create a consensual security interest. [Gardner v. Montgomery County Teachers Federal Credit Union](#), 864 F. Supp. 2d 410 (D. Md. 2012).
- 2 [15 U.S.C.A. § 1666h\(a\)\(2\)](#).
- 3 [15 U.S.C.A. § 1666h\(b\)](#).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(i) In General

§ 17. Limitations on penalty fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

The amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open-end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, must be reasonable and proportional to such omission or violation.¹

A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end consumer credit plan that exceeds the dollar amount associated with the violation.² A card issuer also must not impose a fee for violating the terms or other requirements of a credit card account under an open-end consumer credit plan when there is no dollar amount associated with the violation.³ Specifically, there is no dollar amount associated with the following violations: transactions that the card issuer declines to authorize; account inactivity; and the closure or termination of an account.⁴

A card issuer is not allowed to impose more than one fee for violating the terms or other requirements of a credit card account under an open-end consumer credit plan based on a single event or transaction.⁵ A card issuer may, at its option, comply with this prohibition by imposing no more than one fee for violating the terms or other requirements of an account during a billing cycle.⁶

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Footnotes

- 1 15 U.S.C.A. § 1665d(a).
As to penalty fees being proper when based on costs, see 12 C.F.R. § 226.52(b)(1)(i), and as to penalty fees being proper when under regulatory safe harbors, see 12 C.F.R. § 226.52(b)(1)(ii).
- 2 12 C.F.R. § 226.52(b)(2)(i)(A).
- 3 12 C.F.R. § 226.52(b)(2)(i)(B).
- 4 12 C.F.R. § 226.52(b)(2)(i)(B).
- 5 12 C.F.R. § 226.52(b)(2)(ii).
- 6 12 C.F.R. § 226.52(b)(2)(ii).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(i) In General

§ 18. Limitations on imposition of finance charges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

A card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account under an open-end consumer credit plan if those finance charges are based on balances for days in billing cycles that precede the most recent billing cycle, or any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.¹ This provision, however, does not apply to adjustments to finance charges as a result of the resolution of a dispute, or adjustments to finance charges as a result of the return of a payment.²

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Footnotes

- ¹ 12 C.F.R. § 226.54(a)(1).
A "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. 12 C.F.R. § 226.54(a)(2).
- ² 12 C.F.R. § 226.54(b).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law

a. Truth in Lending Act

(i) In General

§ 19. Standards applicable to initial issuance of subprime or fee harvester cards

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

The Truth in Lending Act requires if the terms of a credit card account under an open-end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account.¹ Such provision, however, may not be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.²

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Footnotes

¹ 15 U.S.C.A. § 1637(n)(1).

² 15 U.S.C.A. § 1637(n)(2).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law

a. Truth in Lending Act

(i) In General

§ 20. Provisions applicable to card issuer and seller

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32, 34

Notwithstanding any agreement to the contrary, a credit card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.¹ If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.²

With respect to a credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the credit card issuer, the card issuer may not, by contract, or otherwise, prohibit any such seller from offering a discount to a credit cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.³

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Footnotes

- ¹ 15 U.S.C.A. § 1666g.
- ² 12 C.F.R. § 226.12(f)(2).
- ³ 15 U.S.C.A. § 1666f(a).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law

a. Truth in Lending Act

(ii) Payment Provisions

§ 21. Due dates for payment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

The payment due date for a credit card account under an open-end consumer credit plan must be the same day each month.¹ If the payment due date for a credit card account under an open-end consumer credit plan is a day on which the credit card issuer does not receive or accept payments by mail (including weekends and holidays), the issuer may not treat a payment received on the next business day as late for any purpose.²

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¹ 15 U.S.C.A. § 1637(o)(1).

² 15 U.S.C.A. § 1637(o)(2).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(ii) Payment Provisions

§ 22. Time to make payments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

Forms

[Am. Jur. Pleading and Practice Forms, Truth in Lending and Consumer Credit Protection § 121](#) (Complaint, petition, or declaration—Allegation—Improper imposition of finance charge by creditor)

A credit card issuer may not treat a payment on a credit card account under an open-end consumer credit plan as late for any purpose, unless the issuer has adopted reasonable procedures designed to ensure that each periodic statement, containing the required information, is mailed or delivered to the credit cardholder not later than 21 days before the payment due date.¹

If an open-end consumer credit plan provides a time period within which a credit cardholder may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part, unless a statement which includes the amount upon which the finance charge for the period is based was mailed or delivered to the cardholder not later than 21 days before the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.²

Observation:

If a card issuer makes a material change in the address for receiving payments or procedures for handling payments, and such change causes a material delay in the crediting of a payment to the cardholder's account during a 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account during the 60-day period following the date on which the change took effect.³

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Footnotes

- 1 [15 U.S.C.A. § 1666b\(a\).](#)
As to the information required to be included in a periodic statement, see [15 U.S.C.A. § 1637\(b\).](#)
- 2 [15 U.S.C.A. § 1666b\(b\).](#)
- 3 [12 C.F.R. § 226.10\(f\).](#)

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(ii) Payment Provisions

§ 23. Prohibition on penalties for on-time payments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

A credit card issuer is prohibited from imposing any finance charge on a credit card account under an open-end consumer credit plan as a result of the loss of any time period provided by the issuer within which the credit cardholder may repay any portion of the credit extended without incurring a finance charge, with respect to any balances for days in billing cycles that precede the most recent billing cycle,¹ or any balances or portions thereof in the current billing cycle that were repaid within such time period.² This prohibition, however, does not apply to any adjustment to a finance charge as a result of the resolution of a dispute,³ or any adjustment to a finance charge as a result of the return of a payment for insufficient funds.⁴

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Footnotes

- ¹ 15 U.S.C.A. § 1637(j)(1)(A).
- ² 15 U.S.C.A. § 1637(j)(1)(B).
- ³ 15 U.S.C.A. § 1637(j)(2)(A).
- ⁴ 15 U.S.C.A. § 1637(j)(2)(B).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(ii) Payment Provisions

§ 24. Limit on fees related to method of payment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

With respect to a credit card account under an open-end consumer credit plan, the credit card issuer may not impose a separate fee to allow the credit cardholder to repay an extension of credit or finance charge, whether such repayment is made by mail, electronic transfer, telephone authorization, or other means, unless such payment involves an expedited service by a service representative of the credit card issuer.¹

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¹ [15 U.S.C.A. § 1637\(l\)](#).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(ii) Payment Provisions

§ 25. Allocation of payments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

When a credit cardholder makes a payment in excess of the required minimum periodic payment for a credit card account under an open-end consumer credit plan, the card issuer generally must allocate the excess amount first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.¹

When a balance on a credit card account under an open-end consumer credit plan is subject to a deferred interest or similar program that provides that a cardholder will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, the card issuer must allocate any amount paid by the cardholder in excess of the required minimum periodic payment consistent with the general rule, except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with the general rule,² or the card issuer may at its option allocate any amount paid by the cardholder in excess of the required minimum periodic payment among the balances on the account in the manner requested by the cardholder.³ When a balance on a credit card account under an open-end consumer credit plan is secured, the card issuer may at its option allocate any amount paid by the cardholder in excess of the required minimum periodic payment to that balance if requested by the cardholder.⁴

Footnotes

- 1 12 C.F.R. § 226.53(a).
- 2 12 C.F.R. § 226.53(b)(1)(i).
- 3 12 C.F.R. § 226.53(b)(1)(ii).
- 4 12 C.F.R. § 226.53(b)(2).

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20 Am. Jur. 2d Credit Cards and Charge Accounts § 26

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Credit Cards and Charge Accounts

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(ii) Payment Provisions

§ 26. Repayment of outstanding balance

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

A credit card issuer generally may not change the terms governing the repayment of any outstanding balance on a credit card account.¹ The credit card issuer, however, may provide the credit cardholder with one of the following methods of repaying any outstanding balance: (1) an amortization period of not less than five years, beginning on the effective date of an increase as provided in the required notice,² or (2) a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of an increase stated in the required notice,³ or a method that is no less beneficial to the obligor than one of those methods.⁴

Definition:

The term "outstanding balance" means the amount owed on a credit card account under an open-end consumer credit plan as of the end of the 14th day after the date on which the creditor provides notice of an increase in the annual percentage rate, fee, or finance charge.⁵



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Footnotes

- 1 15 U.S.C.A. § 1666i-1(c)(l).
- 2 15 U.S.C.A. § 1666i-1(c)(2)(A).
- 3 15 U.S.C.A. § 1666i-1(c)(2)(B).
As to the notice required for an increase in rate, see § 12.
- 4 15 U.S.C.A. § 1666i-1(c)(l).
- 5 15 U.S.C.A. § 1666i-1(d).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(ii) Payment Provisions

§ 27. Payment upon death of cardholder

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

For credit card accounts under an open-end consumer credit plan, card issuers must adopt reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased accountholder can determine the amount of and pay any balance on the account in a timely manner.¹ This provision, however, does not apply to the account of a deceased cardholder if a joint accountholder remains on the account.²

Upon request by the administrator of an estate, a card issuer must provide the administrator with the amount of the balance on a deceased cardholder's account in a timely manner.³ The providing of the amount of the credit card account balance by the card issuer to the estate administrator within 30 days of receiving a request to do so is deemed to be timely.⁴ After receiving a request from the estate administrator for the amount of the balance on a deceased cardholder's account, a card issuer must not impose any fees on the account (such as a late fee, annual fee, or over-the-limit fee) or increase any annual percentage rate, except as otherwise provided by law.⁵ A card issuer must waive or rebate any additional finance charge due to a periodic interest rate if payment in full of the disclosed balance is received within 30 days after disclosure.⁶

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Footnotes

¹ 12 C.F.R. § 226.11(c)(1)(i).

- 2 12 C.F.R. § 226.11(c)(1)(ii).
- 3 12 C.F.R. § 226.11(c)(2)(i).
- 4 12 C.F.R. § 226.11(c)(2)(ii).
- 5 12 C.F.R. § 226.11(c)(3)(i) (referring to 12 C.F.R. § 226.55(b)(2)).
- 6 12 C.F.R. § 226.11(c)(3)(ii).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(iii) Correction of Billing Errors

§ 28. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

Under the Truth in Lending Act, upon the timely receipt of a credit cardholder's written notice, a credit card issuer must investigate and verify a disputed billing statement.¹ To trigger a card issuer's obligation to investigate and verify a disputed billing statement, a cardholder's written notice must be received by the card issuer within 60 days of the card issuer's transmission of the first statement to the cardholder's account containing the alleged error,² and must satisfy content requirements.³ Specifically, the cardholder's written notice to the issuer must set forth or otherwise enable the card issuer to identify the name and account number (if any) of the cardholder,⁴ indicate the cardholder's belief that the statement contains a billing error and the amount of such billing error,⁵ and set forth the reasons for the cardholder's belief (to the extent applicable) that the statement contains a billing error.⁶ A credit cardholder's notice to the credit card issuer claiming the entire account balance is in dispute, without pointing out a specific computation error or accounting error, does not provide the requisite notice of a billing error required by the Truth in Lending Act.⁷

The credit card issuer must, unless the credit cardholder has, after giving timely written notice and before the expiration of the time limits specified, agreed that the billing statement was correct, not later than 30 days after the receipt of the notice, send a written acknowledgment thereof to the cardholder, unless the card issuer has otherwise complied with the appropriate resolution procedures within such 30-day period.⁸ The card issuer must not later than two complete billing cycles of the issuer (in no event later than 90 days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the cardholder as being erroneous either: (1) make appropriate corrections in the account of the cardholder,

including the crediting of any finance charges on amounts erroneously billed, and transmit to the cardholder a notification of such corrections and the issuer's explanation of any change in the amount indicated by the cardholder and, if any such change is made and the cardholder so requests, copies of documentary evidence of the cardholder's indebtedness; or (2) send a written explanation or clarification to the cardholder, after having conducted an investigation, setting forth to the extent applicable the reasons why the issuer believes the account of the cardholder was correctly shown in the statement and, upon request of the cardholder, provide copies of documentary evidence of the cardholder's indebtedness.⁹ In the case of a billing error where the cardholder alleges that the issuer's billing statement reflects goods not delivered to the cardholder or the cardholder's designee in accordance with the agreement made at the time of the transaction, an issuer may not construe such amount to be correctly shown unless the issuer determines that such goods were actually delivered, mailed, or otherwise sent to the cardholder and provides the cardholder with a statement of such determination.¹⁰ A credit card issuer, after complying with such provisions with respect to an alleged billing error, has no further responsibility if the cardholder continues to make substantially the same allegation with respect to such error.¹¹

Any credit card issuer who fails to comply with the requirements regarding the correction of billing errors forfeits any right to collect from the credit cardholder the amount indicated by the cardholder to be a billing error, and any finance charges thereon, except that the amount required to be forfeited may not exceed \$50.¹²

Observation:

While the Truth In Lending Act refers to a 60-day notice to the credit card issuer of a billing error and the steps the card issuer must take if a cardholder notifies it of a billing error, notice of such billing error by the cardholder is not required to trigger the protections of the Truth In Lending Act against unauthorized card use.¹³

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Footnotes

- 1 [Dawkins v. Sears Roebuck and Co.](#), 109 F.3d 241 (5th Cir. 1997).
- 2 [Dawkins v. Sears Roebuck and Co.](#), 109 F.3d 241 (5th Cir. 1997).
- 3 [Langenfeld v. Chase Bank USA, N.A.](#), 537 F. Supp. 2d 1181 (N.D. Okla. 2008).
- 4 15 U.S.C.A. § 1666(a)(1).
- 5 15 U.S.C.A. § 1666(a)(2).
Alleged erroneous finance charges in a credit cardholder's notice to the card issuer do not qualify as billing errors, resulting in the notice being insufficient under the Truth in Lending Act for failing to meet content requirements. [Langenfeld v. Chase Bank USA, N.A.](#), 537 F. Supp. 2d 1181 (N.D. Okla. 2008).
As to what a billing error may consist of, see 15 U.S.C.A. § 1666(b).
- 6 15 U.S.C.A. § 1666(a)(3).
- 7 [Daniel v. Chase Bank USA, N.A.](#), 650 F. Supp. 2d 1275 (N.D. Ga. 2009).
- 8 15 U.S.C.A. § 1666(a)(3)(A).
- 9 15 U.S.C.A. § 1666(a)(3)(B).
- 10 15 U.S.C.A. § 1666(a)(3)(B).

11 15 U.S.C.A. § 1666(a)(3).

12 15 U.S.C.A. § 1666(e).

13 *Crestar Bank, N.A. v. Cheevers*, 744 A.2d 1043 (D.C. 2000).

As to the limitation of cardholder liability for the unauthorized use of a credit card under the Truth In Lending Act, see §§ 66 to 71.

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law


a. Truth in Lending Act

(iii) Correction of Billing Errors

§ 29. Rules pending resolution

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 32

Forms

[Am. Jur. Pleading and Practice Forms, Truth in Lending and Consumer Credit Protection § 120](#) (Complaint, petition, or declaration—Allegation—Creditor's wrongful reporting of disputed amount as delinquent)

Until a billing error which a credit cardholder alleges has been made by a credit card issuer to the cardholder's account is resolved, the cardholder need not pay, and the card issuer may not try to collect, any portion of any required payment that the cardholder believes is related to the disputed amount (including related finance or other charges).¹ If the cardholder has enrolled in an automatic payment plan offered by the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer may not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to three business days before the scheduled payment date.² The card issuer or its agent also may not, directly or indirectly, make or threaten to make an adverse report to any person about the cardholder's credit standing, or report that an amount or account is delinquent, because the cardholder failed to pay the disputed amount or related finance or other charges.³

A credit card issuer may not, prior to the sending of a written explanation or clarification, restrict or close an account with respect to which the credit cardholder has indicated that the cardholder believes such account to contain a billing error solely because of the cardholder's failure to pay the amount indicated to be in error.⁴ A provision of a credit card contract authorizing the issuer to revoke the right to use the card at any time with or without cause and without notice does not waive this protection accorded a cardholder by the Truth in Lending Act.⁵ A credit card issuer, however, may apply against the credit limit on the cardholder's account the amount indicated to be in error.⁶ A credit card issuer may not accelerate any part of the cardholder's indebtedness solely because the cardholder has exercised in good faith rights regarding a billing error.⁷

A credit card issuer is not prohibited from taking any action to collect any amount on a credit card account which has not been indicated by the credit cardholder to contain a billing error.⁸ A credit card issuer also is not prohibited from reflecting a disputed amount and related finance or other charges on a periodic statement, provided that the card issuer indicates on or with the periodic statement that payment of any disputed amount and related finance or other charges is not required pending the cardholder's compliance with billing error requirements.⁹

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Footnotes

- | | |
|---|--|
| 1 | 12 C.F.R. § 226.13(d)(1). |
| 2 | 12 C.F.R. § 226.13(d)(1). |
| 3 | 12 C.F.R. § 226.13(d)(2). |
| 4 | 15 U.S.C.A. § 1666(d). |
| | As to a card issuer's written explanation or clarification to a cardholder's notice of billing error, see §§ 28, 29. |
| 5 | Gray v. American Exp. Co., 743 F.2d 10 (D.C. Cir. 1984). |
| 6 | 15 U.S.C.A. § 1666(d). |
| 7 | 12 C.F.R. § 226.13(d)(3). |
| 8 | 15 U.S.C.A. § 1666(c). |
| 9 | 12 C.F.R. § 226.13(d)(4). |

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law

b. Other Federal Statutes

§ 30. National Bank Act

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 30

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[Computation of service or interest charge on bank credit cards as usurious under National Bank Act \(12 U.S.C.A. sec. 85\), 38 A.L.R. Fed. 805](#)

The National Bank Act authorizes national banks to issue, market, and service credit cards,¹ and the interest rate that a national bank may charge in its credit card program is governed by federal law.² Specifically, under the National Bank Act, national banks are authorized to receive, reserve, or charge on evidences of debt interest at the greater of the rate allowed by the laws of the state, territory, or district where the bank is located, or a rate of one per centum in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the national bank is located.³ National banks therefore are permitted to charge out-of-state cardholders any interest rate allowed by the bank's home state,⁴ and another state may not override interest rates, charged against a credit card account holder by a national bank, that are lawful under contracts and the rules of the bank's home state.⁵ The National Bank Act also provides penalties for the taking, receiving, reserving, or charging a rate of interest greater than is allowed under the Act.⁶

The issue whether a national bank has made usurious service or interest charges where bank credit cards are involved is, in the first instance, a matter of federal law,⁷ and the state law claims by credit card customers of national banks, alleging that the banks' practice of charging late fees in addition to periodic interest charges violates state law, are completely preempted by the National Bank Act and thus must be removed to federal court.⁸ The determination to be made in federal court regarding usury, however, is to be made by reference to state law.⁹ Where courts have looked to the state law regulating interest or service charge rates, the computation of a service or interest charge has been held usurious¹⁰ or not usurious,¹¹ depending upon the particular circumstances involved. Compound interest or service charges levied on credit card accounts have been held usurious where state law does not permit the particular interest or service charges involved.¹²

Observation:

In multi-state transactions, the law to be applied in determining the maximum allowable interest rate is that of the state in which the national bank issuing the credit cards is organized and based, as a result of which such a bank may charge its out-of-state customers the highest rate permitted by its home state, where that rate exceeds the rate permitted by the state in which the cardholder resides.¹³

Practice Tip:

Several actions alleging usurious interest or service charges under the National Bank Act have been brought successfully as class action suits.¹⁴

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Footnotes

- 1 First Nat. Bank of Omaha v. Eldridge, 17 Neb. App. 12, 756 N.W.2d 167 (2008).
- 2 Marquette Nat. Bank of Minneapolis v. First of Omaha Service Corp., 439 U.S. 299, 99 S. Ct. 540, 58 L. Ed. 2d 534 (1978).
- 3 12 U.S.C.A. § 85.
As to the National Bank Act, generally, see Am. Jur. 2d, Banks and Financial Institutions § 993; Am. Jur. 2d, Interest and Usury § 11.
- 4 In re Late Fee and Over-Limit Fee Litigation, 741 F.3d 1022 (9th Cir. 2014), cert. denied, 134 S. Ct. 2878 (2014).
- 5 Swanson v. Bank of America, N.A., 559 F.3d 653 (7th Cir. 2009).
- 6 12 U.S.C.A. § 86.
As to forfeiture and penalties under the National Bank Act, generally, see Am. Jur. 2d, Interest and Usury §§ 277 to 282, 302.

- 7 Fisher v. First Nat. Bank of Chicago, 538 F.2d 1284 (7th Cir. 1976); United Missouri Bank of Kansas City, N. A. v. Danforth, 394 F. Supp. 774 (W.D. Mo. 1975).
- 8 Nelson v. Citibank (South Dakota) N.A., 794 F. Supp. 312 (D. Minn. 1992).
- 9 Partain v. First Nat. Bank of Montgomery, 467 F.2d 167 (5th Cir. 1972); Fisher v. First Nat. Bank of Chicago, 538 F.2d 1284 (7th Cir. 1976).
- In effect, the National Bank Act "defers" to the laws of the state in which a national bank is located to establish the interest rate which the national bank can charge. [Acker v. Provident National Bank](#), 512 F.2d 729 (3d Cir. 1975).
- 10 Haas v. Pittsburgh Nat. Bank, 526 F.2d 1083, 20 Fed. R. Serv. 2d 957 (3d Cir. 1975); Partain v. First Nat. Bank of Montgomery, 467 F.2d 167 (5th Cir. 1972).
- 11 Acker v. Provident National Bank, 512 F.2d 729 (3d Cir. 1975); Fisher v. First Nat. Bank of Chicago, 538 F.2d 1284 (7th Cir. 1976); Fisher v. First Nat. Bank of Omaha, 548 F.2d 255, 38 A.L.R. Fed. 792 (8th Cir. 1977); Peterson v. Wells Fargo Bank, 556 F. Supp. 1100 (N.D. Cal. 1981).
- Retroactive amendment of state usury law absolves a national bank of usury with respect to its credit card operations; the National Bank Act adopts not only the state's numerical interest rate limitations but also the body of the state's case law interpreting its usury limitations. [Roper v. Consurve, Inc.](#), 777 F. Supp. 508 (S.D. Miss. 1990), *aff'd*, 932 F.2d 965 (5th Cir. 1991).
- 12 Haas v. Pittsburgh Nat. Bank, 526 F.2d 1083, 20 Fed. R. Serv. 2d 957 (3d Cir. 1975); Partain v. First Nat. Bank of Montgomery, 467 F.2d 167 (5th Cir. 1972).
- 13 Marquette Nat. Bank of Minneapolis v. First of Omaha Service Corp., 439 U.S. 299, 99 S. Ct. 540, 58 L. Ed. 2d 534 (1978).
- 14 Roper v. Consurve, Inc., 777 F. Supp. 508 (S.D. Miss. 1990), *aff'd*, 932 F.2d 965 (5th Cir. 1991); Cosgrove v. First & Merchants Nat. Bank, 68 F.R.D. 555 (E.D. Va. 1975).

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II. Statutory Regulation

A. Civil Aspects

2. Federal Law

b. Other Federal Statutes

§ 31. Federal Deposit Insurance Act

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 30

State-chartered depository institutions, including savings banks, or branches of foreign banks, insured under the Federal Deposit Insurance Corporation (FDIC), are permitted to take, receive, reserve, or charge on evidence of debt, interest at a rate of not more than one per centum in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such state bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the state, territory, or district where the bank is located, whichever may be greater, notwithstanding any state constitution or statute to the contrary.¹ A state-chartered institution insured by the FDIC thus is permitted to charge out-of-state credit card customers interest at the rate permitted by its home state,² even where that rate exceeds the rate permitted by the law of the state where the cardholder resides, and permits the imposition of late charges where the law of its home state incorporates such charges into its definition of interest, even if such charges are barred by the law of the cardholder's state.³

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Footnotes

- ¹ 12 U.S.C.A. § 1831d(a).
- ² *Greenwood Trust Co. v. Com. of Mass.*, 971 F.2d 818 (1st Cir. 1992); *In re Late Fee and Over-Limit Fee Litigation*, 741 F.3d 1022 (9th Cir. 2014), cert. denied, 134 S. Ct. 2878 (2014).
- ³ *Greenwood Trust Co. v. Com. of Mass.*, 971 F.2d 818 (1st Cir. 1992).

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II. Statutory Regulation

B. Criminal Offenses

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A.L.R. Index, Credit Cards

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B. Criminal Offenses

1. Under Federal Statutes

a. Truth in Lending Act

§ 32. Generally

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[What Constitutes Violation of s 134 of Consumer Credit Protection Act \(15 U.S.C.A. s 1644\), Prohibiting Fraudulent Use of Credit Card, 173 A.L.R. Fed. 613](#)

The Truth in Lending Act (TILA) broadly proscribes the fraudulent use of credit cards in interstate or foreign commerce or transactions affecting such commerce.¹ Specifically, TILA contains provisions prohibiting the use, or an attempt or conspiracy to use a credit card in a transaction affecting interstate or foreign commerce;² transporting, attempting, or conspiring to transport a credit card in interstate commerce;³ the use of interstate commerce to sell or transport a credit card;⁴ the receipt or concealment of goods obtained by use of a credit card;⁵ the receipt or concealment of tickets for interstate or foreign transportation obtained by use of a credit card;⁶ and the furnishing of money through use of a credit card.⁷

Courts have differed over the meaning of the term "credit card" itself in the federal fraudulent use of a credit card provision of TILA,⁸ and some authority holds that the core element of a "credit card" is the account number, not the piece of plastic, so that fraudulent use of such number falls within the prohibitions of the statute.⁹ Other authority, however, has concluded that the

statute refers only to credit cards themselves and not to account numbers, so that there can be no conviction where the defendant never actually held any of the cards.¹⁰ Accordingly, under this view a defendant who communicates by telephone fraudulently obtained credit card account numbers does not violate the statute.¹¹

Observation:

The enactment of the provision of TILA creating criminal penalties for the unauthorized use of credit cards in interstate transaction was intended to ensure and expand the federal government's capacity to deal with fraudulent credit card schemes, and does not restrict the use of other prosecutorial tools to address such credit card frauds.¹²

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Footnotes

- 1 15 U.S.C.A. § 1644.
- 2 § 33.
- 3 § 34.
- 4 § 35.
- 5 § 36.
- 6 § 37.
- 7 § 38.
- 8 15 U.S.C.A. § 1644.
- 9 U.S. v. Bice-Bey, 701 F.2d 1086, 12 Fed. R. Evid. Serv. 1280 (4th Cir. 1983).
- 10 U.S. v. Callihan, 666 F.2d 422 (9th Cir. 1982).
- 11 U.S. v. Callihan, 666 F.2d 422 (9th Cir. 1982).
- 12 U.S. v. Green, 494 F.2d 820 (5th Cir. 1974).

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

a. Truth in Lending Act

§ 33. Use, attempt or conspiracy to use card in transaction affecting interstate or foreign commerce

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[What Constitutes Violation of s 134 of Consumer Credit Protection Act \(15 U.S.C.A. s 1644\), Prohibiting Fraudulent Use of Credit Card, 173 A.L.R. Fed. 613](#)

Under the Truth in Lending Act, whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating \$1,000 or more, will be fined not more than \$10,000 or imprisoned not more than 10 years, or both.¹ Congress, in enacting this provision, intended to confine the aggregating of purchases only to those purchases made in a transaction affecting interstate or foreign commerce and intended to exclude any transaction in intrastate commerce.²

The requirement that there be a purpose of obtaining money or anything else with a credit card, which within a one-year period has a value aggregating \$1,000 or more, does not require aggregation in a single offense of all transactions conducted within a one-year period, and does not forbid charging the accused with a separate offense for each use of a card within the one-

year period, where each alleged use involved obtaining cash or goods in excess of \$1,000.³ Sales tax can be included in the calculation of the \$1,000 aggregate value threshold.⁴

Practice Tip:

The \$1,000 monetary threshold element stated in the fraudulent use of a credit card provision is jurisdictional.⁵ The \$1,000 monetary threshold element, however, need not be in the mind of a defendant who knowingly joins a conspiracy which envisioned the maximum use of each counterfeit credit card where each counterfeit card could, in fact, be used to obtain over \$1,000 in goods and services and would necessarily affect interstate commerce.⁶

Observation:

In a prosecution for the fraudulent use of a stolen credit card in violation of the foregoing provision,⁷ evidence as to the interstate movement of credit card invoices or tickets issued after the credit card purchases is sufficient to establish that the use of a stolen credit card by the defendant is a transaction affecting commerce as required by the provision.⁸ Furthermore, the fraudulent use of a credit card is established where the proof indicates that the defendant used the card under a false name and testifies that the defendant does not know the true cardholder and has no authorization to use anyone else's credit cards, such admissions permitting a rational fact finder to conclude beyond a reasonable doubt that if the defendant used the cardholder's card, the defendant did so without the cardholder's permission.⁹

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Footnotes

- 1 15 U.S.C.A. § 1644(a).
- 2 U.S. v. Mikelberg, 517 F.2d 246 (5th Cir. 1975).
- 3 U.S. v. Abod, 770 F.2d 1293 (5th Cir. 1985).
- 4 U.S. v. Draves, 103 F.3d 1328, 173 A.L.R. Fed. 775 (7th Cir. 1997).
- 5 U.S. v. De Biasi, 712 F.2d 785, 13 Fed. R. Evid. Serv. 1010, 72 A.L.R. Fed. 48 (2d Cir. 1983); U.S. v. Draves, 103 F.3d 1328, 173 A.L.R. Fed. 775 (7th Cir. 1997).
- 6 U.S. v. De Biasi, 712 F.2d 785, 13 Fed. R. Evid. Serv. 1010, 72 A.L.R. Fed. 48 (2d Cir. 1983).
- 7 15 U.S.C.A. § 1644(a).
- 8 U.S. v. Lomax, 598 F.2d 582, 4 Fed. R. Evid. Serv. 456 (10th Cir. 1979).
- 9 U.S. v. Bice-Bey, 701 F.2d 1086, 12 Fed. R. Evid. Serv. 1280 (4th Cir. 1983).

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

a. Truth in Lending Act

§ 34. Transporting, attempting, or conspiring to transport card in interstate commerce

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[What Constitutes Violation of s 134 of Consumer Credit Protection Act \(15 U.S.C.A. s 1644\), Prohibiting Fraudulent Use of Credit Card, 173 A.L.R. Fed. 613](#)

Under the Truth in Lending Act, whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained, will be fined not more than \$10,000 or imprisoned not more than 10 years, or both.¹

Observation:

The foregoing provision proscribing the transportation of stolen, lost, and/or altered credit cards with fraudulent intent, in interstate and foreign commerce,² is not invalid for vagueness on the asserted theory that a common person must speculate as to the meaning of the words "fraudulent intent."³

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Footnotes

1 15 U.S.C.A. § 1644(b).

2 15 U.S.C.A. § 1644(b).

3 U.S. v. Peden, 556 F.2d 278, 2 Fed. R. Evid. Serv. 375 (5th Cir. 1977).

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

a. Truth in Lending Act

§ 35. Use of interstate commerce to sell or transport card

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[What Constitutes Violation of s 134 of Consumer Credit Protection Act \(15 U.S.C.A. s 1644\), Prohibiting Fraudulent Use of Credit Card, 173 A.L.R. Fed. 613](#)

Under the Truth in Lending Act, whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained, will be fined not more than \$10,000 or imprisoned not more than 10 years, or both.¹

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Footnotes

¹ [15 U.S.C.A. § 1644\(c\).](#)

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

a. Truth in Lending Act

§ 36. Receipt or concealment of goods obtained by use of card

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[What Constitutes Violation of s 134 of Consumer Credit Protection Act \(15 U.S.C.A. s 1644\), Prohibiting Fraudulent Use of Credit Card, 173 A.L.R. Fed. 613](#)

Under the Truth in Lending Act, whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which within any one-year period has a value aggregating \$1,000 or more, has moved in or is part of, or which constitutes interstate or foreign commerce, and has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card, will be fined not more than \$10,000 or imprisoned not more than 10 years, or both.¹

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¹ [15 U.S.C.A. § 1644\(d\)](#).

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

a. Truth in Lending Act

§ 37. Receipt or concealment of tickets for interstate or foreign transportation obtained by use of card

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[What Constitutes Violation of s 134 of Consumer Credit Protection Act \(15 U.S.C.A. s 1644\), Prohibiting Fraudulent Use of Credit Card, 173 A.L.R. Fed. 613](#)

Under the Truth in Lending Act, whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which within any one-year period have a value aggregating \$500 or more, and have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit cards, will be fined not more than \$10,000 or imprisoned not more than 10 years, or both.¹

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Footnotes

¹ [15 U.S.C.A. § 1644\(e\).](#)

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

a. Truth in Lending Act

§ 38. Furnishing of money or item of value through use of card

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[What Constitutes Violation of s 134 of Consumer Credit Protection Act \(15 U.S.C.A. s 1644\), Prohibiting Fraudulent Use of Credit Card, 173 A.L.R. Fed. 613](#)

Under the Truth in Lending Act, whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating \$1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained, will be fined not more than \$10,000 or imprisoned not more than 10 years, or both.¹

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Footnotes

¹ [15 U.S.C.A. § 1644\(f\).](#)

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

a. Truth in Lending Act

§ 39. Requirement of fraudulent obtainment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

The requirement that a credit card be "fraudulently obtained," in order to constitute a violation of the prohibition of the Truth and Lending Act against the use of a credit card, which has been fraudulently obtained, in interstate or foreign commerce or transactions affecting such commerce,¹ does not necessitate proof of actual reliance² by the innocent party upon false or misleading statements made by the defendant in order to obtain credit,³ but rather requires proof only of a tendency to induce reliance.⁴ The fact that a defendant procured a credit card with the intent to use it to obtain goods or services without paying for them is insufficient by itself to establish that the credit card was fraudulently obtained; rather, some deceitful or false action by the obtainer with regard to the one from whom the card is actually obtained is a necessary predicate to violation of the statute.⁵ Accordingly, where credit cards were obtained by original cardholders without any intent to defraud issuing companies and were thereafter sold or given to the defendants with the knowledge that the defendants would use the cards to make charges without paying for them, after which the cards were reported as stolen or lost by the original cardholders, whatever other offenses may have been committed by the defendants, the credit cards were not "fraudulently obtained" within the meaning of the Truth and Lending Act which prohibits using or transporting in interstate commerce any fraudulently obtained credit card.⁶

Observation:

Fraudulent obtaining and fraudulent intent are two separate and distinct elements of an offense under the provisions⁷ of the Truth and Lending Act.⁸



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Footnotes

- 1 15 U.S.C.A. § 1644.
- 2 U.S. v. Chapman, 591 F.2d 1287 (9th Cir. 1979).
- 3 U.S. v. Kay, 545 F.2d 491 (5th Cir. 1977).
- 4 U.S. v. Kay, 545 F.2d 491 (5th Cir. 1977).
- 5 U.S. v. Kasper, 483 F. Supp. 1208 (E.D. Pa. 1980).
- 6 U.S. v. Kasper, 483 F. Supp. 1208 (E.D. Pa. 1980).
- 7 15 U.S.C.A. § 1644(a), (b).
- 8 U.S. v. Kasper, 483 F. Supp. 1208 (E.D. Pa. 1980).

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

b. Other Federal Statutes

§ 40. Mail fraud

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

The federal mail fraud statute¹ has been used for prosecutions based on various improper or unauthorized uses of credit cards.² This statute is sufficiently general in its language to include credit card frauds if the statute's requirements are otherwise met.³ Thus, for example, use of the mails by defendants to transmit credit card applications containing false information, as part of a fraudulent scheme to obtain goods and services without paying the purchase price, constitutes a violation of the statute.⁴ However, a credit cardholder's allegation that an issuing company has a secret marketing strategy of waiving annual fees in whole or in part whenever a cardholder complains about the fee or threatens to cancel the card fails to state a claim under the mail fraud statute, since the statute is not meant to protect consumers against the irritation of learning that others have gotten a better deal.⁵

The federal mail fraud statute does not reach an unauthorized use of a credit card where the only use of the mails is to complete the billing process.⁶ Accordingly, a credit card misuse scheme may be too remote from the associated mailing to permit a prosecution under the statute.⁷ However, a defendant's mailing of falsified applications for credit cards to various issuers of such cards is the first step in executing a scheme or artifice to defraud where, after receiving them, the defendant uses the cards to obtain property and money, and as such, comes within the prohibition of the statute.⁸

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Footnotes

1 18 U.S.C.A. § 1341.

As to the use of the mails to defraud, generally, see [Am. Jur. 2d, Post Office §§ 119 to 136](#).

2 [U.S. v. Wallach](#), 935 F.2d 445, 33 Fed. R. Evid. Serv. 1 (2d Cir. 1991); [U.S. v. Wingate](#), 997 F.2d 1429 (11th Cir. 1993) (fraudulent use of credit cards).

3 [U. S. v. Maze](#), 414 U.S. 395, 94 S. Ct. 645, 38 L. Ed. 2d 603 (1974).

4 [U.S. v. Green](#), 494 F.2d 820 (5th Cir. 1974).

5 [Litwin v. American Exp. Co.](#), 838 F. Supp. 855 (S.D. N.Y. 1993).

6 [U. S. v. Maze](#), 414 U.S. 395, 94 S. Ct. 645, 38 L. Ed. 2d 603 (1974).

The federal mail fraud statute is not violated when an oil company mails invoices to a school district whose credit card was used by the defendants to obtain gasoline and other filling station products and services for themselves, notwithstanding that the defendants knew or could be charged with knowledge that the oil company would use the mails in billing the district for those things; in this situation, the fraudulent scheme reaches fruition when the defendants receive the goods and services complained of, and hence it cannot be said that the mailings in question were for the purpose of executing the scheme, as the statute requires. [Parr v. U.S.](#), 363 U.S. 370, 80 S. Ct. 1171, 4 L. Ed. 2d 1277 (1960).

7 [U.S. v. Gardner](#), 490 F.2d 840 (5th Cir. 1974).

8 [King v. U.S.](#), 512 F.2d 353 (6th Cir. 1975).

The federal mail fraud statute was applicable to a scheme to defraud credit card issuers where the defendant's mailings of applications for credit cards were an integral part of the alleged fraud. [U.S. v. Stein](#), 500 F.2d 678 (9th Cir. 1974).

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

b. Other Federal Statutes

§ 41. Mail fraud—Relation to credit card fraud statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

The credit card fraud provisions of the Truth in Lending Act (TILA)¹ were not intended to constitute the sole vehicle for prosecution of credit card frauds or to preclude prosecution of credit card frauds under the mail fraud statute.² Thus, a fraudulent scheme involving the use of stolen credit cards may properly be prosecuted under the mail fraud statute, rather than the provisions of TILA dealing specifically with credit card fraud, where the plan, which involves participation by merchants, does not reach fruition at presentation of the cards, but rather after the bank or credit card company makes mail payment to the merchants in response to the mailing of invoices, rendering use of the mails integral to the scheme.³

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Footnotes

- ¹ 15 U.S.C.A. § 1644, discussed generally in § 32.
- ² U.S. v. Green, 494 F.2d 820 (5th Cir. 1974).
- As to the mail fraud statute, generally, see § 40.
- ³ U.S. v. Adamo, 534 F.2d 31 (3d Cir. 1976).

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

b. Other Federal Statutes

§ 42. Fraud by wire, radio, or television

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A federal statute dealing with fraud by wire, radio, or television¹ has been applied to credit card offenses.² The elements of wire fraud, as applied to credit card offenses, are identical to those required to sustain a charge of mail fraud, except the use of the wires rather than the mails must be shown.³ A scheme involving reissuing cash airline tickets for tickets purchased with credit cards and, in some instances, by giving cash refunds for the fraudulently obtained tickets may be punishable under both the wire fraud and mail fraud statutes if both means are employed in execution of the scheme.⁴ However, a credit cardholder's allegation that an issuing company has a secret marketing strategy of waiving annual fees in whole or in part whenever a cardholder complains about the fee or threatens to cancel the card fails to state a claim under the wire fraud statute, since the statute is not meant to protect consumers against the irritation of learning that others have gotten a better deal.⁵

CUMULATIVE SUPPLEMENT

Cases:

Evidence was sufficient to find defendant had intent to defraud company, as required to convict defendant of wire fraud under a right to control theory, where, even though company received full benefit of its bargain with bank that employed defendant for a currency exchange, defendant told company that bank would purchase currency from company quietly without ramping the fix rate and that bank would seek a profit of just a few pips, but defendant told his trader to ramp the fix rate 100 pips above where the conversion rate started. 18 U.S.C.A. § 1343. *United States v. Johnson*, 939 F.3d 82 (2d Cir. 2019).

Conviction for wire fraud was supported by sufficient evidence, including evidence that defendant sought payment for coupons issued by manufacturers of consumer products by lying about where coupons had been redeemed, and that defendant requested reimbursement for coupons that he knew had never been used to purchase a product. [18 U.S.C.A. § 1343](#). [United States v. Balsiger](#), 910 F.3d 942 (7th Cir. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [18 U.S.C.A. § 1343](#).
As to a general discussion of this statute, see [Am. Jur. 2d, Telecommunications § 196](#).
- 2 [U.S. v. Ismoil](#), 100 F.3d 380, 45 Fed. R. Evid. Serv. 581 (5th Cir. 1996); [U.S. v. Saavedra](#), 684 F.2d 1293, 11 Fed. R. Evid. Serv. 1185 (9th Cir. 1982).
- 3 [U.S. v. Andrade](#), 788 F.2d 521, 20 Fed. R. Evid. Serv. 570 (8th Cir. 1986).
As to the federal mail fraud statute, generally, see [§ 40](#).
- 4 [U.S. v. Andrade](#), 788 F.2d 521, 20 Fed. R. Evid. Serv. 570 (8th Cir. 1986).
- 5 [Litwin v. American Exp. Co.](#), 838 F. Supp. 855 (S.D. N.Y. 1993).

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B. Criminal Offenses

1. Under Federal Statutes

b. Other Federal Statutes

§ 43. Fraud and related activity in connection with access devices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[What constitutes violation of 18 U.S.C.A. sec. 1029, prohibiting fraud or related activity in connection with credit card or other credit access device, 115 A.L.R. Fed. 213](#)

A federal statute dealing with fraud and related activity in connection with access devices¹ punishes certain conduct if the offense affects interstate or foreign commerce,² and establishes broad authority to punish credit card crime.³ As used in this statute, the term "access device" means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument).⁴ This definition is broad enough to cover valid but unassigned credit card account numbers surreptitiously obtained and fraudulently used to obtain goods and services,⁵ and the number of a merchant account at a bank which was used to process credit card transactions.⁶

The term "counterfeit access device," as used in the statute dealing with fraud and related activity in connection with access devices, means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device.⁷ This definition is broad enough to cover genuine credit cards issued pursuant to fraudulent applications, as the use of a fraudulent application to obtain a credit card is functionally equivalent to the manufacture of counterfeit cards.⁸ Furthermore, the term "unauthorized access device," as used in the statute, means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud.⁹ Stolen credit cards,¹⁰ as well as expired credit cards,¹¹ are types of unauthorized access devices. Unauthorized access devices, however, must be usable in order to be covered under the statute.¹²

Under the statute dealing with fraud and related activity in connection with access devices, it has been held that the amounts of the value of things obtained in different districts by use of one or more unauthorized credit cards may be aggregated in order to reach the required jurisdictional amount,¹³ and that sales taxes on goods and services purchased with unauthorized credit cards are includible in determining the aggregate value of goods and services obtained for purposes of the jurisdictional amount.¹⁴

Observation:

An indictment under the access devices provision in which two uses of an unauthorized credit card are joined in a single count is not duplicitous where such uses constitute parts of a single continuing scheme to defraud.¹⁵

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Footnotes

- 1 18 U.S.C.A. § 1029.
- 2 18 U.S.C.A. § 1029(a).
- 3 U.S. v. Ryan, 894 F.2d 355 (10th Cir. 1990).
- 4 18 U.S.C.A. § 1029(e)(1).
One hundred and ten blank credit cards were access devices within the meaning of 18 U.S.C.A. § 1029(e)(1), since they could be used in conjunction with other access devices, account numbers, in order to gain access to accounts or to obtain goods or services, where the defendant had an embosser and had been practicing embossing account numbers onto blank cards. U.S. v. Nguyen, 81 F.3d 912 (9th Cir. 1996).
- 5 U.S. v. Taylor, 945 F.2d 1050 (8th Cir. 1991).
- 6 U.S. v. Dabbs, 134 F.3d 1071 (11th Cir. 1998).
- 7 18 U.S.C.A. § 1029(e)(2).
- 8 U.S. v. Brannan, 898 F.2d 107 (9th Cir. 1990).
- 9 18 U.S.C.A. § 1029(e)(3).
Since there was no proof that the defendant had the intent to defraud the defendant's employer at the time the defendant obtained the credit card for the firm's use, the government failed to prove that the credit card was an "unauthorized access device" obtained with intent to defraud. U.S. v. Nixon, 694 F.3d 623, 89 Fed. R. Evid. Serv. 480 (6th Cir. 2012).
- 10 U.S. v. Ismoila, 100 F.3d 380, 45 Fed. R. Evid. Serv. 581 (5th Cir. 1996).

- 11 U.S. v. Jones, 557 F. Supp. 2d 630 (E.D. Pa. 2008), judgment aff'd, 332 Fed. Appx. 801 (3d Cir. 2009).
12 U.S. v. Onyesoh, 674 F.3d 1157 (9th Cir. 2012).
13 U.S. v. Ryan, 894 F.2d 355 (10th Cir. 1990).
14 U.S. v. Picquet, 963 F.2d 54 (5th Cir. 1992).
15 U.S. v. Brewer, 768 F. Supp. 104 (S.D. N.Y. 1991).

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II. Statutory Regulation

B. Criminal Offenses

1. Under Federal Statutes

b. Other Federal Statutes

§ 44. Interstate transportation of stolen securities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A federal statute prohibits, among other things, the interstate transportation of stolen securities.¹ The courts have reached differing results as to whether a charge of the unauthorized use of a credit card is sufficient to state an offense in a prosecution for the interstate transportation of stolen securities, with some cases holding that such a charge sufficiently states an offense under the statute,² while other cases have taken the view that a charge of the unauthorized use of a credit card does not state an offense for violation of the statute.³ In some cases, it has been held that the particular evidence of the unauthorized use of a credit card was insufficient to sustain a conviction under the federal statute prohibiting the interstate transportation of stolen securities.⁴ The courts have also reached differing results as to whether a charge slip is a security under the statute.⁵

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Footnotes

- ¹ 18 U.S.C.A. § 2314 (generally referred to as the National Stolen Property Act).
As to the National Stolen Property Act, generally, see [Am. Jur. 2d, Receiving and Transporting Stolen Property](#) §§ 43 to 56.
- ² [Lewis v. U.S.](#), 301 F.2d 787 (10th Cir. 1962); [Williams v. U.S.](#), 192 F. Supp. 97 (S.D. Cal. 1961).
The transportation of a stolen credit card in interstate commerce is a violation of the National Stolen Property Act if the card is transported with the unlawful or fraudulent intent to use in falsely making, forging, altering, or counterfeiting evidence of indebtedness or document or writing, evidencing ownership of goods, wares,

and merchandise, or evidencing transfer or assignment of any writing, title or interest in or to goods, wares, and merchandise. *U.S. v. Rhea*, 199 F. Supp. 301 (W.D. Ark. 1961).

3 *Beam v. U.S.*, 364 F.2d 756, 24 A.L.R.3d 981 (6th Cir. 1966); *U.S. v. Crouch*, 224 F. Supp. 969 (D. Del. 1963); *U.S. v. Young*, 210 F. Supp. 640 (W.D. Mo. 1962); *U.S. v. Barnett*, 258 F. Supp. 455 (M.D. Tenn. 1965).

4 *Merrill v. U.S.*, 338 F.2d 763 (5th Cir. 1964); *Barack v. U.S.*, 317 F.2d 619 (9th Cir. 1963); *U.S. v. Jones*, 182 F. Supp. 146 (W.D. Mo. 1960).

5 *U.S. v. Barnett*, 258 F. Supp. 455 (M.D. Tenn. 1965).

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II. Statutory Regulation

B. Criminal Offenses

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a. Specific Credit Card Statutes

§ 45. Generally

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[Criminal Liability for Unauthorized Use of Credit Card Under State Credit Card Statutes](#), 68 A.L.R.6th 527

Trial Strategy

[State Law Remedies Against Credit Card Company](#), 119 Am. Jur. Proof of Facts 3d 407

[Identity Theft and Other Misuses Of Credit and Debit Cards](#), 81 Am. Jur. Proof of Facts 3d 113

In some jurisdictions, the unauthorized use of a credit card constitutes a distinct substantive criminal offense by virtue of express statutory enactment.¹

Footnotes

- 1 [Hale v. State](#), 214 Ga. App. 899, 449 S.E.2d 520 (1994); [Com. v. Brown](#), 269 Pa. Super. 150, 409 A.2d 108 (1979); [Lee v. State](#), 962 S.W.2d 171 (Tex. App. Houston 1st Dist. 1998), petition for discretionary review refused, (July 15, 1998).
Separate convictions for the unauthorized use or disclosure of a credit card number were warranted, where the defendant both disclosed another individual's credit card number to a store clerk and then used that number to purchase goods. [Montgomery v. State](#), 206 Md. App. 357, 47 A.3d 1140 (2012), cert. denied, 429 Md. 83, 54 A.3d 761 (2012).

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II. Statutory Regulation

B. Criminal Offenses

2. Under State Statutes

a. Specific Credit Card Statutes

§ 46. Model Penal Code

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West's Key Number Digest, Consumer Credit  19, 20

The Model Penal Code provides that a person commits an offense if he or she uses a credit card for the purpose of obtaining property or services with knowledge that:

- (1) the card is stolen or forged;
- (2) the card has been revoked or cancelled; or
- (3) for any other reason his or her use of the card is unauthorized by the issuer.¹

It is an affirmative defense to prosecution for the use of a credit card that is unauthorized by the issuer if the actor proves by a preponderance of the evidence that he or she had the purpose and ability to meet all obligations to the issuer arising out of the actor's use of the card.² Under the Model Penal Code, a "credit card" means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.³

The unauthorized use of a credit card under the Model Penal Code is a felony of the third degree if the value of the property or services secured or sought to be secured by means of the credit card exceeds \$500; otherwise it is a misdemeanor.⁴

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Footnotes

- 1 Model Penal Code § 224.6.
- 2 Model Penal Code § 224.6.
- 3 Model Penal Code § 224.6.
- 4 Model Penal Code § 224.6.

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a. Specific Credit Card Statutes

§ 47. Validity, construction, and application

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West's Key Number Digest

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[Criminal Liability for Unauthorized Use of Credit Card Under State Credit Card Statutes, 68 A.L.R.6th 527](#)

The validity or constitutionality of particular credit card statutes criminalizing certain acts in connection with a credit card has been sustained as against various contentions.¹

With regard to the application of a credit card statute providing for criminal penalties, the fact that the legislature intended to exclude from criminal liability use, by the original issuee, of an expired card has been held not to preclude prosecution of an unauthorized person using such an expired card.² Furthermore, a defendant may properly be convicted of the unauthorized use of a credit card, notwithstanding the requirement of a statute that the user be notified that use is unauthorized, where the notice requirement obviously relates to lawful possessors of credit cards whose privileges are being limited or revoked, and where the defendant was charged with using a lost or stolen card of another.³ The retention of a lost credit card with an intent to use it as a form of identification to facilitate the cashing of a forged check constitutes violation of a statute prohibiting financial transaction card theft.⁴

A statute which provides criminal penalties for a person who, with intent to defraud, uses, for purposes of obtaining money, goods, services, or anything else of value, a credit card obtained or retained in violation of such statute or a credit card which such person knows is forged, expired, or revoked, or who obtains money, goods, or services, by falsely representing himself or herself to be a cardholder, prohibits use of a credit card with intent to defraud even when unsuccessful.⁵

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Footnotes

- 1 [State v. Hudson](#), 11 N.C. App. 712, 182 S.E.2d 198 (1971); [Nolan v. State](#), 629 S.W.2d 940 (Tex. Crim. App. 1982); [State v. Davis](#), 7 Wash. App. 38, 497 P.2d 952 (Div. 1 1972).
- 2 [Witcher v. State](#), 420 So. 2d 287 (Ala. Crim. App. 1982).
- 3 [People v. Pipkin](#), 762 P.2d 736 (Colo. App. 1988).
- 4 [Harris v. State](#), 166 Ga. App. 202, 303 S.E.2d 534 (1983).
- 5 [State v. Gonsalves](#), 476 A.2d 108 (R.I. 1984).

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II. Statutory Regulation

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2. Under State Statutes

a. Specific Credit Card Statutes

§ 48. Validity, construction and application—As precluding conviction under other statutes

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[Criminal Liability for Unauthorized Use of Credit Card Under State Credit Card Statutes, 68 A.L.R.6th 527](#)

Most jurisdictions have adopted the view that the existence of a specific credit card abuse statute will not prevent prosecution and conviction under a general penal statute.¹ In other words, there is no inconsistency between the two types of statutes.² When a person commits acts which constitute violation of more than one criminal statute, the state has the option to prosecute under any or all of the statutes violated.³ Where the specific credit card offense charged does not necessarily involve the same elements as a more general statutory prohibition, it has been held that a specific credit card statute will not preclude prosecution or conviction under the general statute.⁴

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Footnotes

- ¹ [Davidson v. Com.](#), 436 S.W.2d 495 (Ky. 1968) (false pretenses); [State v. Gledhill](#), 67 N.J. 565, 342 A.2d 161 (1975) (forgery); [Com. v. Sargent](#), 823 A.2d 174 (Pa. Super. Ct. 2003) (forgery); [Rabb v. State](#), 681

S.W.2d 152 (Tex. App. Houston 14th Dist. 1984), petition for discretionary review refused, (Apr. 3, 1985) (robbery); *Mack v. State*, 93 Wis. 2d 287, 286 N.W.2d 563 (1980) (forgery).

As to the prosecution of a credit card offense under a general penal statute where there is no specific credit card abuse statute, see §§ 51 to 53.

2 *State v. Gledhill*, 67 N.J. 565, 342 A.2d 161 (1975); *Garcia v. State*, 669 S.W.2d 169 (Tex. App. Dallas 1984), petition for discretionary review refused, (Oct. 22, 1986).

3 *Von Hauger v. State*, 252 Ind. 619, 251 N.E.2d 116 (1969).

4 *McCrary v. State*, 210 So. 2d 877 (Miss. 1968); *Shriver v. Graham*, 1961 OK CR 99, 366 P.2d 774 (Okla. Crim. App. 1961).

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a. Specific Credit Card Statutes

§ 49. Sufficiency of indictment

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[Criminal Liability for Unauthorized Use of Credit Card Under State Credit Card Statutes](#), 68 A.L.R.6th 527

Various claimed defects or omissions have been held not to render the particular indictment, charging a violation of a credit card statute, invalid,¹ such as a failure to name the person to whom the credit card was presented by the defendant,² or to allege what property or services the defendant obtained or intended to obtain through use of the credit card.³ An indictment charging knowing use of a credit card is proper even though not in the exact wording of the statute.⁴

On the other hand, indictments charging a defendant with violation of a statute prohibiting credit card abuse have been held to be fundamentally defective for failure to properly allege one of the essential elements of the offense, such as the defendant's use of the card with knowledge that the card had not been issued to him or her and with knowledge that the use was without the effective consent of the cardholder,⁵ or that the defendant used the card with intent to obtain property or services fraudulently.⁶

Observation:

Although an indictment for credit card abuse was found to be ambiguous in that the term "fictitious credit card" could mean that a card was not issued by the owner or was issued to a nonexistent cardholder, the conviction was upheld because the ambiguity had no impact on the defendant's ability to present a defense that the card had been issued to a person who had allowed the defendant to borrow the card.⁷

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Footnotes

- 1 [State v. Daly](#), 4 Haw. App. 52, 659 P.2d 83 (1983).
- 2 [Gordon v. State](#), 638 S.W.2d 654 (Tex. App. Fort Worth 1982).
- 3 [Moallen v. State](#), 699 S.W.2d 926 (Tex. App. Houston 1st Dist. 1985), petition for discretionary review refused, (Apr. 30, 1986).
- 4 [Harris v. State](#), 629 S.W.2d 805 (Tex. App. Houston 14th Dist. 1982).
- 5 [Ex parte White](#), 644 S.W.2d 488 (Tex. Crim. App. 1983).
An allegation that a defendant had "in his possession or under his control a credit card or the information therefrom issued in the name of another person without the cardholder's consent" stated a legal presumption but did not adequately charge a violation of the Credit Card Act. [Carter v. State](#), 382 So. 2d 610 (Ala. Crim. App. 1980), writ denied, 382 So. 2d 614 (Ala. 1980).
- 6 [Ex parte Reed](#), 574 S.W.2d 161 (Tex. Crim. App. 1978).
- 7 [Olurebi v. State](#), 875 S.W.2d 807 (Tex. App. Houston 1st Dist. 1994), petition for discretionary review refused, (Sept. 21, 1994).

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II. Statutory Regulation

B. Criminal Offenses

2. Under State Statutes

a. Specific Credit Card Statutes

§ 50. Sufficiency and admissibility of evidence

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

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[Criminal Liability for Unauthorized Use of Credit Card Under State Credit Card Statutes, 68 A.L.R.6th 527](#)

The evidence must be sufficient to sustain a conviction under state statutes prohibiting the fraudulent or unauthorized use of a credit card,¹ and proof of guilt must be beyond a reasonable doubt.² Circumstantial evidence may support a jury verdict of guilt of credit card fraud.³

In a prosecution for credit card abuse, the owners of the credit cards are properly permitted to testify concerning thefts of the cards where use of the cards without the owner's consent is an essential element of the offense, and the thefts are so interwoven with the offense as to be part of the *res gestae*.⁴

Under a credit card fraud statute specifically encompassing obtaining valuable services through the unauthorized use of a credit card, there is no requirement to show that the business from which the services were obtained sustained a monetary loss, as it is sufficient to prove that, by use of the credit card, the defendant obtained valuable services from the business.⁵

A variance between the indictment and the proof may be fatal to the prosecution's case of credit card abuse.⁶

Observation:

In some instances, the proof may be sufficient to support separate convictions of several offenses, such as theft, unlawful use of a credit card, and uttering a forged instrument.⁷

CUMULATIVE SUPPLEMENT

Cases:

Evidence was sufficient to support defendant's convictions for identity fraud; the State presented evidence that an accomplice used victim's transaction cards, which had been given to her by defendant, as well as receipts evidencing the attempted use of the cards. [Ga. Code Ann. § 16-9-120\(5\)](#). [Daniel v. State](#), 803 S.E.2d 603 (Ga. Ct. App. 2017).

Evidence supported conviction for unauthorized use of an access card as theft; one perpetrator testified that defendant accompanied group to victim's home and went to store to use victim's credit cards, and police found items purchased with credit cards at house where defendant was known to stay and where he received mail. [LSA-R.S. 14:67.3](#). [State v. Dickson](#), 174 So. 3d 1242 (La. Ct. App. 2d Cir. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Tarpley v. Estelle](#), 703 F.2d 157 (5th Cir. 1983); [Houston v. State](#), 528 N.E.2d 818 (Ind. Ct. App. 1988) (attempted credit card fraud); [State v. Vestal](#), 740 S.W.2d 378 (Mo. Ct. App. E.D. 1987); [Hopps v. State Bd. of Parole](#), 127 N.H. 133, 500 A.2d 355 (1985) (conspiracy to use counterfeit credit cards); [Edwards v. State](#), 672 S.W.2d 10 (Tex. App. Houston 14th Dist. 1984).
The evidence was sufficient to support a conviction for credit card fraud, where the defendant used credit cards belonging to the victim to place six charges on the first date and two charges on the second date, and testimony from three witnesses corroborated four of the credit card charges. [Schuler v. State](#), 2008 WY 47, 181 P.3d 929 (Wyo. 2008).
- 2 [People v. Heinz](#), 87 Ill. App. 3d 1, 42 Ill. Dec. 569, 409 N.E.2d 64 (3d Dist. 1980).
- 3 [Moss v. State](#), 136 Ga. App. 241, 220 S.E.2d 761 (1975); [State v. Shelley](#), 628 S.W.2d 436 (Tenn. Crim. App. 1981).
Circumstantial evidence of a cardholder's lack of effective consent to another's use of a credit card is admissible in a prosecution for credit card abuse, even if the victim testifies. [Lee v. State](#), 962 S.W.2d 171 (Tex. App. Houston 1st Dist. 1998), petition for discretionary review refused, (July 15, 1998).
- 4 [Ward v. State](#), 581 S.W.2d 164 (Tex. Crim. App. 1979).
- 5 [Hale v. State](#), 214 Ga. App. 899, 449 S.E.2d 520 (1994).

- 6 [Shannon v. State, 631 S.W.2d 772 \(Tex. App. Beaumont 1982\)](#), petition for discretionary review refused, (June 30, 1982).
- 7 [Buckley v. State, 163 Ind. App. 113, 322 N.E.2d 113 \(1975\)](#).

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II. Statutory Regulation

B. Criminal Offenses

2. Under State Statutes

b. General Criminal Statutes

§ 51. Generally

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

In some jurisdictions, credit card offenses are not covered specifically and are therefore punishable under general criminal statutes, such as those pertaining to forgery,¹ false personation,² or false pretenses.³ In a few instances, credit card offenses have been prosecuted under general statutes relating to receiving stolen property.⁴ Also, in at least one jurisdiction, the unauthorized use of a credit card may sustain a conviction for deceptive practices.⁵ The selling of information purporting to put consumers in a position to acquire low interest credit cards has been held to constitute a deceptive act in connection with the sale of merchandise under a state consumer fraud statute.⁶

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Footnotes

- ¹ § 52.
- ² *Teal v. State*, 43 Ala. App. 584, 196 So. 2d 729 (1967).
A woman who signed the name of the credit cardholder's wife was not merely misrepresenting her marital status but was guilty of the statutory crime of obtaining property by means of impersonating another person entitled thereto. *Snipes v. State*, 50 Ala. App. 139, 277 So. 2d 413 (Crim. App. 1973).
- ³ *Blackledge v. U. S.*, 447 A.2d 46 (D.C. 1982); *Teves v. State*, 237 Md. 653, 207 A.2d 614 (1965); *State v. Allen*, 53 N.J. 250, 250 A.2d 12 (1969).
Where the defendant presented a BankAmericard belonging to another person to cover charges accumulated at a restaurant and represented that he had authority to sign the draft on behalf of such other person, the

defendant could not be convicted of a felony for obtaining goods and merchandise from the restaurant by false and fraudulent representation, because other statutes made defrauding an innkeeper a misdemeanor or gross misdemeanor. [State v. Walls](#), 81 Wash. 2d 618, 503 P.2d 1068 (1972).

As to whether the existence of a specific credit card abuse statute precludes prosecution under a general penal statute, see § 48.

4 [Humphrey v. State](#), 1969 OK CR 90, 452 P.2d 590 (Okla. Crim. App. 1969); [Com. v. Elam](#), 221 Pa. Super. 315, 293 A.2d 103 (1972).

5 [People v. Cassell](#), 101 Ill. App. 2d 279, 243 N.E.2d 363 (1st Dist. 1968).

The state failed to prove an attempted deceptive practice within the meaning of the statute listing unauthorized use of another's credit card to obtain property, labor, or services as one activity constituting deceptive practice, where the credit card alleged to have been used was not identified or introduced into evidence, and it was not established that the defendant presented the card or signed the sales slip in an attempt to obtain merchandise. [People v. Ramsey](#), 11 Ill. App. 3d 596, 297 N.E.2d 295 (1st Dist. 1973).

6 [State ex rel. Woods v. Sgrillo](#), 176 Ariz. 148, 859 P.2d 771 (Ct. App. Div. 2 1993).

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B. Criminal Offenses

2. Under State Statutes

b. General Criminal Statutes

§ 52. Forgery

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

A.L.R. Library

[Signing Credit Charge, Credit Sales Slip, or Credit Electronic Point of Sale Terminal, as Forgery, 80 A.L.R.6th 599](#)

General forgery statutes have been applied in credit card abuse cases,¹ and the credit card receipt may constitute the writing or written instrument needed for a forgery.² Furthermore, a person may be convicted for aiding and abetting or complicity in the commission of a forgery through the use of a credit card.³

Observation:

The offense of unlawful use of credit cards may be, but is not always, a more specific version of the offense of forgery. As regards mens rea, there is no substantial difference between the offense of unlawful use of credit cards and the offense of forgery. A difference may arise, however, as regards actus reus. Suppose one hands a credit card to the sales clerk. Proof of this will satisfy the actus reus requirement of both the offense of unlawful use of credit cards and of the offense of forgery. Next suppose, however, that

one only displays, instead of handing, the credit card to the sales clerk. Proof of this display will satisfy the actus reus requirement of the offense of unlawful use of credit cards but not of the offense of forgery.⁴

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Footnotes

- 1 [People v. Searcy](#), 199 Cal. App. 2d 740, 18 Cal. Rptr. 779, 90 A.L.R.2d 814 (1st Dist. 1962); [People v. Reynolds](#), 85 Ill. App. 3d 549, 40 Ill. Dec. 833, 407 N.E.2d 64 (5th Dist. 1980); [People v. Mathis](#), 147 A.D.2d 851, 538 N.Y.S.2d 336 (3d Dep't 1989); [Com. v. Sargent](#), 823 A.2d 174 (Pa. Super. Ct. 2003).
As to whether the existence of a specific credit card abuse statute precludes prosecution under a general penal statute, see § 48.
- 2 [People v. Le Grand](#), 81 A.D.2d 945, 439 N.Y.S.2d 695 (3d Dep't 1981); [Com. v. Sargent](#), 823 A.2d 174 (Pa. Super. Ct. 2003).
The defendant's actions in running the victim's credit card through the restaurant's computerized credit card system, and authorizing and submitting the amount to be charged to such card, constituted the utterance of a written instrument, specifically, a credit card receipt, within scope of the forgery statute. [Tatusko v. State](#), 990 N.E.2d 986 (Ind. Ct. App. 2013).
- 3 [Com. v. Caswell](#), 614 S.W.2d 253 (Ky. Ct. App. 1981); [State v. Bender](#), 24 Ohio App. 3d 131, 493 N.E.2d 552 (9th Dist. Lorain County 1985).
- 4 [Com. v. Brown](#), 269 Pa. Super. 150, 409 A.2d 108 (1979).

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II. Statutory Regulation

B. Criminal Offenses

2. Under State Statutes

b. General Criminal Statutes

§ 53. Theft

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  19, 20

Credit card offenses may be prosecuted under general statutes pertaining to theft.¹ Grand larceny may properly be charged where a series of transactions involving use of a credit card may be viewed as part of one plan, one intention, and one general impulse, even though each individual purchase was below the statutory minimum for such offense.²

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Footnotes

- ¹ Ex parte Pizzi, 505 So. 2d 1250 (Ala. 1987); State v. Jahns, 133 Ariz. 562, 653 P.2d 19 (Ct. App. Div. 2 1982); People v. Keller, 165 Cal. App. 2d 419, 332 P.2d 174 (2d Dist. 1958).
- ² People v. Robertson, 167 Cal. App. 2d 571, 334 P.2d 938 (2d Dist. 1959).

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

1. In General

§ 54. Issuance of credit cards

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  30, 32, 34

Forms

[Am. Jur. Legal Forms 2d §§ 78:15 to 78:19](#) (Issuer's denial of credit)

The Truth in Lending Act (TILA) provides that no credit card may be issued except in response to a request or application therefor, although this prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.¹ A retailer sending holders of store credit cards new cards is a substitution of an accepted credit card, where the activation of the new card transfers the balance of the old card, and the old card is automatically closed upon activation of the new card, and therefore does not violate the TILA provision prohibiting issuers from sending cards to consumers without receiving a request or application.²

A card issuer may not open any credit card account for any consumer under an open-end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account³ based on the consumer's income or assets and current obligations.⁴

Observation:

No credit card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made on the campus of an institution of higher education,⁵ near the campus of an institution of higher education,⁶ or at an event sponsored by or related to an institution of higher education.⁷ An institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.⁸

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Footnotes

- 1 [15 U.S.C.A. § 1642.](#)
A consumer's allegations that the store sent him a general purpose credit card without requiring him to return his store credit card and that the store sent general purpose cards to former store cardholders who had cancelled their cards were sufficient to state a claim that the store's practice of sending general purpose cards violated the prohibition of the Truth in Lending Act against the issuance of unsolicited credit cards. [Acosta v. Target Corp.](#), 728 F. Supp. 2d 968 (N.D. Ill. 2010).
As to the definition of an "accepted credit card," see [§ 2](#).
- 2 [Acosta v. Target Corp.](#), 745 F.3d 853 (7th Cir. 2014).
- 3 [15 U.S.C.A. § 1665e.](#)
- 4 [12 C.F.R. § 226.51\(a\)\(1\)\(i\).](#)
- 5 [15 U.S.C.A. § 1650\(f\)\(2\)\(A\).](#)
- 6 [15 U.S.C.A. § 1650\(f\)\(2\)\(B\).](#)
- 7 [15 U.S.C.A. § 1650\(f\)\(2\)\(C\).](#)
- 8 [15 U.S.C.A. § 1650\(f\)\(1\).](#)

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

1. In General

§ 55. Card applications and solicitations

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Forms

[Am. Jur. Legal Forms 2d § 78:10](#) (Application for personal credit card—Credit information—Federal truth in lending disclosures)

[Am. Jur. Legal Forms 2d § 78:11](#) (Notice to accompany credit card offer—Fair Credit Reporting Act—Right to prohibit use of information in credit report)

[Am. Jur. Legal Forms 2d § 78:20](#) (Issuer's response to application—More information needed)

[Am. Jur. Pleading and Practice Forms, Credit Cards §§ 67, 68](#) (Complaint in federal court—By applicant for credit card—Against card issuer—Discriminatory refusal to issue credit card—Equal Credit Opportunity Act)

[Am. Jur. Pleading and Practice Forms, Credit Cards § 69](#) (Complaint in federal court—By applicant for credit card—Against card issuer—Failure of issuer to make required disclosures—Equal Credit Opportunity Act)

The disclosure of certain information is required in credit and charge card applications and solicitations¹ by the card issuer.² The information that the card issuer must disclose on or with an application or solicitation includes annual percentage rates;³ fees for issuance or availability;⁴ fixed finance charges;⁵ minimum interest charges;⁶ transaction charges;⁷ grace periods;⁸ balance computation methods;⁹ a statement on charge card payments;¹⁰ cash advance fees;¹¹ late payment fees;¹² over-the-limit fees;¹³ balance transfer fees;¹⁴ returned-payment fees;¹⁵ required insurance, debt cancellation or debt suspension coverage;¹⁶ available

credit;¹⁷ and a reference to a government-established Web site and a statement that consumers may obtain on the Web site information about shopping for and using credit cards.¹⁸ If the amount of any fee required to be disclosed in an application or solicitation is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.¹⁹ The card issuer must disclose such information in accordance with the requirements that apply with respect to direct mail and electronic applications and solicitations,²⁰ telephone applications and solicitations,²¹ applications and solicitations made available to the general public, including those contained in a catalog, magazine, or other generally available publication,²² or in-person applications and solicitations.²³

Observation:

The Equal Credit Opportunity Act prohibits any creditor from discriminating against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex, or marital status, or age (provided the applicant has the capacity to contract),²⁴ and such provision is applicable to credit card issuers and applicants.²⁵

CUMULATIVE SUPPLEMENT

Cases:

Under Virginia law, an initial solicitation by a credit card company cannot form the basis of a breach of contract claim. [In re Capital One Bank Credit Card Interest Rate Litigation](#), 51 F. Supp. 3d 1316 (N.D. Ga. 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1 15 U.S.C.A. § 1637(c).
A "solicitation" is an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. 12 C.F.R. § 226.5a(a)(1).
- 2 12 C.F.R. § 226.5a(a).
As to the form of certain disclosures being in a tabular format, see 12 C.F.R. § 226.5a(a)(2).
- 3 12 C.F.R. § 226.5a(b)(1).
- 4 12 C.F.R. § 226.5a(b)(2).
- 5 12 C.F.R. § 226.5a(b)(3).
- 6 12 C.F.R. § 226.5a(b)(3).
- 7 12 C.F.R. § 226.5a(b)(4).
- 8 12 C.F.R. § 226.5a(b)(5).
- 9 12 C.F.R. § 226.5a(b)(6).

10 12 C.F.R. § 226.5a(b)(7).
11 12 C.F.R. § 226.5a(b)(8).
12 12 C.F.R. § 226.5a(b)(9).
13 12 C.F.R. § 226.5a(b)(10).
14 12 C.F.R. § 226.5a(b)(11).
15 12 C.F.R. § 226.5a(b)(12).
16 12 C.F.R. § 226.5a(b)(13).
17 12 C.F.R. § 226.5a(b)(14).
18 12 C.F.R. § 226.5a(b)(15).
19 12 C.F.R. § 226.5a(a)(3).
20 12 C.F.R. § 226.5a(c).
21 12 C.F.R. § 226.5a(d).
22 12 C.F.R. § 226.5a(e).
23 12 C.F.R. § 226.5a(f).
24 15 U.S.C.A. § 1691(a).

As to the Equal Credit Opportunity Act, generally, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 147 to 168](#).

25 [Pierce v. Citibank \(South Dakota\), N.A.](#), 843 F. Supp. 646 (D. Or. 1994), on reconsideration on other grounds, 856 F. Supp. 1451 (D. Or. 1994), judgment [aff'd](#), 92 F.3d 1193 (9th Cir. 1996); [Mercado Garcia v. Ponce Federal Bank, F.S.B.](#), 779 F. Supp. 620 (D.P.R. 1991), [aff'd](#), 979 F.2d 890 (1st Cir. 1992).

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20 Am. Jur. 2d Credit Cards and Charge Accounts § 56

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

1. In General

§ 56. Card applications and solicitations—Consumer under 21

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  30, 32, 34

An application to open a credit card account by a consumer who has not attained the age of 21 as of the date of submission of the application requires the signature of a cosigner, including the parent, legal guardian, spouse, or any other individual who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21,¹ or the submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.² No credit card may be issued to, or open-end consumer credit plan established by or on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets such requirements.³

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Footnotes

- ¹ 15 U.S.C.A. § 1637(c)(8)(B)(i).
- ² 15 U.S.C.A. § 1637(c)(8)(B)(ii).
- ³ 15 U.S.C.A. § 1637(c)(8)(A).

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20 Am. Jur. 2d Credit Cards and Charge Accounts § 57

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

1. In General

§ 57. Credit card agreement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  30, 32, 34

Forms

[Am. Jur. Legal Forms 2d §§ 78:12, 78:13](#) (Agreement regulating use of credit card)

[Am. Jur. Legal Forms 2d § 78:14](#) (Notice of changes to credit card agreement)

[Am. Jur. Pleading and Practice Forms, Credit Cards § 7](#) (Complaint, petition, or declaration—By issuer of credit card—Breach of credit card contract or agreement)

A credit card agreement is required to be in writing pursuant to the Truth in Lending Act.¹ A valid credit card agreement exists between the issuer and holder where both parties sign the contract, and the holder acknowledges that he or she has received copies of the agreement which the holder has read.² A credit card agreement does not establish a fiduciary duty on the part of a bank toward a customer, and the bank and customer are not in the kind of relationship in which a fiduciary duty is automatic.³

While a credit card company may reserve to itself the right to amend its credit card agreements with its cardholders, it can change only those terms encompassed within the scope of the original agreement between the parties.⁴ An issuing bank may have the authority to unilaterally amend an agreement with the credit cardholder by notice and an opt-out provision, giving the cardholder the opportunity to send notice to the bank of the holder's rejection of the amendment.⁵ A credit cardholder's payment on his or her account several months after notice of a change to the credit card agreement took effect, along with

the taking of a cash advance several months after the notice of change took effect, and the failure to contest any credit card statement, constitutes acceptance of the new credit card agreement, where the new agreement contains language indicating the use of the card after the effective date of change will be deemed acceptance of the new terms.⁶ Further, any allegedly misleading information in a credit card solicitation concerning the card's interest rate will not alter the unambiguous terms of the subsequent cardholder agreement, which allows the issuer to change the terms of the agreement at any time and which makes clear that the cardholder by retaining and using the card agrees to the terms of the agreement.⁷

The absence of an underlying credit card agreement will not relieve the cardholder of his or her obligation to pay for goods and services the cardholder receives from the credit card issuer through the cardholder's use of the credit card.⁸

Observation:

In a breach of contract action by an issuer against the cardholder, a court in its equitable jurisdiction may find the accumulation of over-limit fees pursuant to the terms of a credit card agreement unconscionable, even though the cardholder agreement provides for such fees.⁹

CUMULATIVE SUPPLEMENT

Cases:

Florida law applied to lenders' conversion claim against credit card processing service provider which had payment processing agreements with borrower's parent corporation, where the payment processing agreements contained Florida choice of law provisions, the funds at issue were located in Florida, and some of the cardholder payments at issue were held in a Florida lockbox account. [Garrison Special Opportunities Fund LP v. Fidelity Nat. Card Services, Inc.](#), 130 A.D.3d 546, 87 U.C.C. Rep. Serv. 2d 156 (1st Dep't 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [In re Leverett](#), 378 B.R. 793 (Bankr. E.D. Tex. 2007).
- 2 [WV Dept. of Health & Human Resources Employees Federal Credit Union v. Tennant](#), 215 W. Va. 387, 599 S.E.2d 810 (2004).
- 3 [Citibank \(South Dakota\), N.A. v. Gifelman](#), 63 Conn. App. 188, 773 A.2d 993 (2001).
- 4 [Sears Roebuck and Co. v. Avery](#), 163 N.C. App. 207, 593 S.E.2d 424 (2004) (under Arizona law).
An issuing bank's amending of a credit card's annual percentage rate (APR) from 6.9% to 11.9% was not a breach of contract, even though the APR was changed after the cardholder paid the annual fee, and the application and cardholder agreement described the fee and interest rate as annual, where the bank retained the right in the agreement to amend terms if it gave proper notice, the bank notified the cardholder of the

change, the annual fee was a charge for the issuance or availability of credit, and payment of the annual fee did not lock the bank into the initial APR. [Gaynoe v. First Union Corp.](#), 153 N.C. App. 750, 571 S.E.2d 24 (2002).

5 [Edelist v. MBNA America Bank](#), 790 A.2d 1249 (Del. Super. Ct. 2001) (under Delaware law).

6 [Citibank \(South Dakota\) N.A. v. Mayo](#), 58 So. 3d 960 (La. Ct. App. 2d Cir. 2011).

7 [Roberts v. Fleet Bank \(R.I.\)](#), 342 F.3d 260 (3d Cir. 2003), as amended, (Oct. 21, 2003) (under Rhode Island law).

8 [Citibank \(S.D.\) N.A. v. Roberts](#), 304 A.D.2d 901, 757 N.Y.S.2d 365 (3d Dep't 2003).

9 [Discover Bank v. Owens](#), 129 Ohio Misc. 2d 71, 2004-Ohio-7333, 822 N.E.2d 869 (Mun. Ct. 2004).

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20 Am. Jur. 2d Credit Cards and Charge Accounts § 58

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

1. In General

§ 58. Credit card agreement—Construction or interpretation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  30, 32

A.L.R. Library

[Validity and construction of revolving charge account contract or plan, 41 A.L.R.3d 682](#)

A credit card agreement is similar to an insurance contract in that it is negotiated and prepared exclusively by the issuer, and consequently, it should be construed narrowly against the creditor.¹ Where liability between a cardholder and the account holder is not clear, courts have construed the agreement strictly against the credit card issuer who drafted the agreement.² A court, however, will not seek out a strained or unusual meaning for the benefit of one party, and courts read and understand such contracts according to the natural and obvious import of the language, without resorting to subtle and forced construction or the purpose of either limiting or extending their operation.³ Further, a credit card agreement is not unconscionable and unenforceable based on the alleged unequal bargaining power between the consumer and the issuing bank and the agreement's allegedly confusing nature.⁴

Every credit card agreement contains an implied covenant of good faith and fair dealing.⁵

Practice Tip:

In establishing and documenting the substantive terms of the agreement, late and over-limit fees and similar charges are, in addition to being subject to federal and state usury and interest rate regulation provisions, subject to state laws of broader application and have on occasion been successfully challenged under such laws.⁶

CUMULATIVE SUPPLEMENT

Cases:

Bank, which issued credit card that offered no-interest financing for health-related services from approved providers, was not liable under District of Columbia law for fraud based on any affirmative misstatement to cardholder, who opened such credit card to purchase personal training sessions at gym, since bank never represented via billing statement that allegedly unauthorized charge from gym was authorized or that cardholder categorically had to pay such charge, given that statement provided clear and conspicuous instructions for disputing any incorrect charge, gym's welcome letter, despite suggesting relationship between bank and gym by including both of their logos, was from gym, not bank, and bank did not encourage, approve, or even know of gym's use of its logo. [McMullen v. Synchrony Bank](#), 300 F. Supp. 3d 292 (D.D.C. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Gray v. American Exp. Co.](#), 743 F.2d 10 (D.C. Cir. 1984) (under New York law); [Citibank \(S.D.\), N.A. v. Hauff](#), 2003 SD 99, 668 N.W.2d 528 (S.D. 2003).
- 2 [Citibank \(S.D.\), N.A. v. Hauff](#), 2003 SD 99, 668 N.W.2d 528 (S.D. 2003).
- 3 [Citibank \(S.D.\), N.A. v. Hauff](#), 2003 SD 99, 668 N.W.2d 528 (S.D. 2003).
- 4 [ALBANK, FSB v. Foland](#), 177 Misc. 2d 569, 676 N.Y.S.2d 461 (N.Y. City Ct. 1998).
- 5 [Fineman v. Citicorp USA, Inc.](#), 137 Ill. App. 3d 1035, 92 Ill. Dec. 780, 485 N.E.2d 591 (1st Dist. 1985).
Allegation by credit cardholders that fee disclosures in the credit card agreement were not clear and conspicuous stated a claim for violation of the implied duty of good faith and fair dealing. [Sims v. First Consumers Nat. Bank](#), 303 A.D.2d 288, 758 N.Y.S.2d 284 (1st Dep't 2003).
Bank did not breach an implied covenant of good faith and fair dealing by failing to safeguard the credit card customer from the unauthorized use of a secondary credit card issued at the customer's request, where the credit card agreement made the person who requested a secondary credit card unconditionally responsible to reimburse the company for claims arising out of authorized uses of secondary cards. [Citibank \(South Dakota\), N.A. v. Gifelman](#), 63 Conn. App. 188, 773 A.2d 993 (2001).

6 [Beasley v. Wells Fargo Bank](#), 235 Cal. App. 3d 1383, 1 Cal. Rptr. 2d 446 (1st Dist. 1991) (a class action in which late fees and over-limit charges imposed by a card issuer were held to be liquidated damages unlawful under California law).

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

1. In General

§ 59. Internet posting and availability of credit card agreements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  30, 32

With respect to any open credit card account, a card issuer must either post and maintain the cardholder's agreement on its Web site,¹ or promptly provide a copy of the cardholder's agreement to the cardholder upon the cardholder's request.² If the card issuer makes an agreement available upon request, the issuer must provide the cardholder with the ability to request a copy of the agreement both by using the issuer's Web site (such as by clicking on a clearly identified box to make the request) and by calling a readily available telephone line the number for which is displayed on the issuer's Web site and clearly identified as to purpose.³ The card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request.⁴

A card issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts, instead of complying with the foregoing provisions, may make agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line, the number for which is displayed on the issuer's Web site and clearly identified as to purpose or included on each periodic statement sent to the cardholder and clearly identified as to purpose.⁵ The card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request.⁶

If the card issuer posts a credit card agreement on its Web site or otherwise provides an agreement to a cardholder electronically, the agreement may be posted or provided in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the cardholder.⁷ Agreements posted or otherwise provided may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number,

provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons.⁸ Agreements posted or otherwise provided must set forth the specific provisions and pricing information applicable to the particular cardholder.⁹ Provisions and pricing information must be complete and accurate as of a date no more than 60 days prior to the date on which the agreement is posted on the card issuer's Web site or the date the cardholder's request for the agreement is received.¹⁰

Credit card agreements provided upon cardholder request may be provided by the card issuer in either electronic or paper form, regardless of the form of the cardholder's request.¹¹

Definition:

A "credit card agreement" means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end consumer credit plan, and includes pricing information.¹²

Observation:

Card issuers may provide credit card agreements in electronic form without regard to the consumer notice and consent requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act).¹³

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Footnotes

- 1 12 C.F.R. § 226.58(e)(1)(i).
- 2 12 C.F.R. § 226.58(e)(1)(ii).
- 3 12 C.F.R. § 226.58(e)(1)(ii).
- 4 12 C.F.R. § 226.58(e)(1)(ii).
- 5 12 C.F.R. § 226.58(e)(2).
- 6 12 C.F.R. § 226.58(e)(2).
- 7 12 C.F.R. § 226.58(e)(3)(ii).
- 8 12 C.F.R. § 226.58(e)(3)(iii).
As to the form and content requirements for such agreements, generally, see 12 C.F.R. § 226.58(e)(3)(i).
- 9 12 C.F.R. § 226.58(e)(3)(iv).
- 10 12 C.F.R. § 226.58(e)(3)(iv).
- 11 12 C.F.R. § 226.58(e)(3)(v).
- 12 12 C.F.R. § 226.58(b)(1).

13

[12 C.F.R. § 226.58\(f\)](#) (referring to [15 U.S.C.A. § 7001\(c\)](#)).

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

2. Card Termination or Withdrawal; Wrongful Billing, Cancellation, Dishonor, or Disclosure

§ 60. Termination or withdrawal of credit cards

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  30, 32

The issuance of a credit card is only an offer to extend a line of open-account credit, and since it is unilateral and supported by no consideration, the offer may be withdrawn at any time,¹ without prior notice, for any reason or, indeed, for no reason at all, and its withdrawal breaches no duty—for there is no duty to continue it—and violates no rights.² Accordingly, no contractual relationship is created by the mere issuance and receipt of a credit card.³ The acceptance or use of the card by the offeree makes a contract between the parties according to its terms.⁴

Credit card issuers can terminate the terms of their offers to extend credit as to future transactions.⁵ If notice of termination of the arrangement is required by either party, it must be so provided in the contract since, as a rule, there is no requirement of prior notice for termination by the issuer.⁶ An agreement which allows the issuer to revoke a card at any time, with or without cause and without notice, has been construed to mean that cancellation can affect only transactions which have not occurred before the cancellation is communicated to the cardholder, although the effort may be as informal as a phone call or a telegram.⁷

Given that, under the Bankruptcy Code, the interest of a debtor in property becomes property of the bankruptcy estate, a card issuer may not revoke a credit card merely because the cardholder has filed a petition in bankruptcy, and this is so despite the fact that the original credit card agreement provides that the card will be revoked if the holder filed a petition in bankruptcy.⁸

Caution:

The termination or withdrawal of a credit card may under certain circumstances violate the Equal Credit Opportunity Act (ECOA),⁹ which prohibits discrimination against any applicant, with respect to any aspect of a credit transaction, on the basis of the applicant's membership in a class of persons protected by ECOA.¹⁰

Observation:

Once a credit card issuer revokes a cardholder's credit privileges, it, not the cardholder, has the right to possess the card and a merchant, as an agent of the issuer, may properly retain the card.¹¹

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Footnotes

- 1 Novack v. Cities Service Oil Co., 149 N.J. Super. 542, 374 A.2d 89 (Law Div. 1977), judgment aff'd, 159 N.J. Super. 400, 388 A.2d 264 (App. Div. 1978); Feder v. Fortunoff, Inc., 114 A.D.2d 399, 494 N.Y.S.2d 42, 53 A.L.R.4th 227 (2d Dep't 1985).
- 2 City Stores Co. v. Henderson, 116 Ga. App. 114, 156 S.E.2d 818 (1967).
- 3 Garber v. Harris Trust & Sav. Bank, 104 Ill. App. 3d 675, 60 Ill. Dec. 410, 432 N.E.2d 1309 (1st Dist. 1982); Novack v. Cities Service Oil Co., 149 N.J. Super. 542, 374 A.2d 89 (Law Div. 1977), judgment aff'd, 159 N.J. Super. 400, 388 A.2d 264 (App. Div. 1978).
- 4 City Stores Co. v. Henderson, 116 Ga. App. 114, 156 S.E.2d 818 (1967); Novack v. Cities Service Oil Co., 149 N.J. Super. 542, 374 A.2d 89 (Law Div. 1977), judgment aff'd, 159 N.J. Super. 400, 388 A.2d 264 (App. Div. 1978).
- 5 Garber v. Harris Trust & Sav. Bank, 104 Ill. App. 3d 675, 60 Ill. Dec. 410, 432 N.E.2d 1309 (1st Dist. 1982).
- 6 City Stores Co. v. Henderson, 116 Ga. App. 114, 156 S.E.2d 818 (1967).
- 7 Gray v. American Exp. Co., 743 F.2d 10 (D.C. Cir. 1984) (applying New York law in pertinent part).
- 8 Matter of Knapp, 137 B.R. 582 (Bankr. D. N.J. 1992).
- 9 15 U.S.C.A. §§ 1691 to 1691f.
- 10 Mercado-Garcia v. Ponce Federal Bank, 979 F.2d 890 (1st Cir. 1992).
- 11 Feder v. Fortunoff, Inc., 114 A.D.2d 399, 494 N.Y.S.2d 42, 53 A.L.R.4th 227 (2d Dep't 1985).

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

2. Card Termination or Withdrawal; Wrongful Billing, Cancellation, Dishonor, or Disclosure

§ 61. Wrongful billing, cancellation, dishonor, or disclosure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  30, 32, 37

A.L.R. Library

[Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure, 53 A.L.R.4th 231](#)

Trial Strategy

[Liability For Supplying False Information To Credit Reporting Agency, 45 Am. Jur. Proof of Facts 3d 221](#)

Forms

[Am. Jur. Legal Forms 2d § 78:25](#) (Cardholder's inquiry concerning billing error)

[Am. Jur. Legal Forms 2d § 78:26](#) (Cardholder's inquiry concerning billing error—Investigation form)

Am. Jur. Pleading and Practice Forms, Credit Cards §§ 21, 22 (Complaint, petition, or declaration—Against card issuer—Wrongful billing)

A credit card issuer may be liable for damages resulting from a violation of state statutory provisions relating to the correction of billing errors.¹

The cancellation of credit has been held not to provide a basis for an action in tort.² Accordingly, the revocation of a credit card and subsequent retention of the credit card by a merchant do not state a cause of action for conversion or prima facie tort.³

A bank and merchant which invade a credit cardholder's contractual right to have a credit card honored can be liable for intentional infliction of emotional distress or outrageous conduct if they intend to inflict emotional distress, and cause mental or emotional distress of a severe serious kind, and go beyond the outer limits of what a reasonable person in the cardholder's position should be expected to tolerate in an arm's length dispute.⁴ However, a refusal to honor a credit card in the presence of the cardholder's guests and other patrons of a restaurant does not constitute an invasion of privacy through the disclosure of private facts, at least where the cardholder fails to plead what were the private facts that the defendants disclosed.⁵

A bank report which erroneously states that the cardholder was delinquent in his or her charge account is not libelous per se.⁶ However, a creditor's letter to the cardholder's employer falsely stating that the cardholder was delinquent in his or her account is libelous per se.⁷ A notice sent to a service station dealer by the issuer of a credit card informing the dealer that the cardholder's credit card was no longer to be honored and that a reward would be paid for its return was not defamatory, where the card issuer had a qualified privilege to send the notice.⁸ A slander complaint against a card issuer will be dismissed where the alleged defamatory words are not slanderous per se and the issuer is not responsible for such words.⁹

Under a statute which gives financial institutions immunity for reporting crimes, a credit card company would not be entitled to immunity for disclosing to a department store, which was a private entity as opposed to a law enforcement or regulatory agency, that the company suspected a shopper of credit card fraud, even though the credit card company made the disclosure with the understanding that the department store's security guard, who had called the credit card company to report suspicious activity, would then immediately call the police; the act did not cover reports of crimes made by financial institutions to private citizens.¹⁰

Observation:

A cause of action against a credit card issuer may be based on a violation of state consumer credit protection laws¹¹ or a state deceptive trade practices statute.¹²

Footnotes

- 1 [Young v. Bank of America](#), 141 Cal. App. 3d 108, 190 Cal. Rptr. 122 (1st Dist. 1983).
As to the correction of billing errors by a card issuer under the Truth in Lending Act, generally, see §§ 28, 29.
- 2 [City Stores Co. v. Henderson](#), 116 Ga. App. 114, 156 S.E.2d 818 (1967).
- 3 [Feder v. Fortunoff, Inc.](#), 123 Misc. 2d 857, 474 N.Y.S.2d 937 (Sup 1984).
- 4 [Flowers v. Bank of America Nat. Trust and Sav. Ass'n](#), 67 Or. App. 791, 679 P.2d 1385 (1984).
- 5 [Flowers v. Bank of America Nat. Trust and Sav. Ass'n](#), 67 Or. App. 791, 679 P.2d 1385 (1984).
- 6 [Smith v. First Nat. Bank of Atlanta](#), 837 F.2d 1575, 10 Fed. R. Serv. 3d 749, 101 A.L.R. Fed. 739 (11th Cir. 1988) (under Georgia law).
- 7 [Conway v. Signal Oil & Gas Co.](#), 229 Ga. 849, 194 S.E.2d 909 (1972).
- 8 [Novack v. Cities Service Oil Co.](#), 149 N.J. Super. 542, 374 A.2d 89 (Law Div. 1977), judgment aff'd, 159 N.J. Super. 400, 388 A.2d 264 (App. Div. 1978).
- 9 [Hartman v. American Express Co., Inc.](#), 58 A.D.2d 575, 395 N.Y.S.2d 664 (2d Dep't 1977).
- 10 [Nevin v. Citibank, N.A.](#), 107 F. Supp. 2d 333 (S.D. N.Y. 2000).
- 11 [Gilbert v. Atlantic Richfield Co.](#), 448 F. Supp. 440 (D. Conn. 1978) (violation of state consumer credit provisions); [Young v. Bank of America](#), 141 Cal. App. 3d 108, 190 Cal. Rptr. 122 (1st Dist. 1983).
- 12 [Garland v. Mobil Oil Corp.](#), 340 F. Supp. 1095 (N.D. Ill. 1972) (partly applying Illinois law).

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

A. Issuer's Rights, Duties and Liabilities

2. Card Termination or Withdrawal; Wrongful Billing, Cancellation, Dishonor, or Disclosure

§ 62. Wrongful billing, cancellation, dishonor, or disclosure—Damages recoverable

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  30, 32, 37

Forms

[Am. Jur. Pleading and Practice Forms, Credit Cards § 20](#) (Complaint, petition, or declaration—Against card issuer—Issuer wrongfully refused to honor purchases of hotel and motel rooms and services—False statements made as to cardholder's credit rating—For actual and punitive damages)

[Am. Jur. Pleading and Practice Forms, Credit Cards § 39](#) (Complaint in federal court—Diversity or citizenship—Against franchisee and agent of franchisee—Negligence in refusing to honor credit card—Damages for mental suffering and physical injury)

Willful violations of statutory standards by a credit card issuer entitles a credit cardholder to compensation for all damages resulting therefrom in an action for wrongful billing, cancellation, dishonor, or disclosure related to a credit card,¹ and there is case authority indicating that treble² or punitive³ damages may be recovered in such an action. An award of damages for mental and emotional distress has been upheld against a bank credit card issuer which displayed "computer-hearted insensitivity" toward the cardholder following a billing error.⁴ There is authority, however, holding that the holder of a bank credit card is not entitled to recover compensation from the bank for loss of consortium in an action for wrongful billing.⁵

Footnotes

- 1 [Young v. Bank of America, 141 Cal. App. 3d 108, 190 Cal. Rptr. 122 \(1st Dist. 1983\).](#)
- 2 [Young v. Bank of America, 141 Cal. App. 3d 108, 190 Cal. Rptr. 122 \(1st Dist. 1983\).](#)
- 3 [Moorhead v. J. C. Penney Co., Inc., 555 S.W.2d 713 \(Tenn. 1977\)](#) (based on outrageous conduct of defendant merchant).
- 4 [Young v. Bank of America, 141 Cal. App. 3d 108, 190 Cal. Rptr. 122 \(1st Dist. 1983\).](#)
- 5 [Lankford v. Trust Co. Bank, 141 Ga. App. 639, 234 S.E.2d 179 \(1977\).](#)

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A.L.R. Index, Credit Cards

A.L.R. Index, Truth in Lending

West's A.L.R. Digest, Consumer Credit  9, 32, 37

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

B. Cardholder's Liability for Purchases Made By Another Person

1. In General

§ 63. Generally

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[Liability of holder of credit card or plate for purchases made thereon by another person, 15 A.L.R.3d 1086](#)

Trial Strategy

[Identity Theft and Other Misuses of Credit and Debit Cards, 81 Am. Jur. Proof of Facts 3d 113](#)

Forms

[Am. Jur. Legal Forms 2d § 78:27](#) (Cardholder's notice to issuer—Unauthorized use of card)

In the absence of statutory limitation provisions,¹ the cases recognize that the party to whom a credit card or charge plate is issued should not ordinarily be held liable for unauthorized purchases made thereon by a third party, in the absence either of a contract specifically providing for liability or of some degree of fault on the cardholder's part.² If there is a contract providing for the cardholder's liability, however, the holder of the credit card may be held liable for unauthorized purchases,³ at least in the absence of facts indicating that the seller failed to use ordinary care with respect to appearances or circumstances raising a question in mind of a reasonable seller as to the identity of the holder,⁴ or facts indicating fraud and bad faith on the part of the seller who ignored printed limitations on the face of the card.⁵ Moreover, there is authority holding that if the person to whom the card is issued shows a certain degree of carelessness or a lack of good faith which results in unauthorized purchases by a third party, the cardholder may be held liable even if there is no contract providing for liability for unauthorized purchases.⁶ However, contrary authority holds that the cardholder's failure to exercise the implied duty of care in the handling of the credit card is not enough to support liability for unauthorized purchases made thereon.⁷

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Footnotes

- 1 § 66.
- 2 *Thomas v. Central Charge Service, Inc.*, 212 A.2d 533, 15 A.L.R.3d 1083 (D.C. 1965); *First Nat. Bank of Commerce v. Ordoyne*, 528 So. 2d 1068 (La. Ct. App. 5th Cir. 1988), writ denied, 532 So. 2d 179 (La. 1988); *Fifth Third Bank/Visa v. Gilbert*, 17 Ohio Misc. 2d 14, 478 N.E.2d 1324 (Mun. Ct. 1984).
In the absence of such factors as estoppel, negligence, or bad faith, the holder is not liable for unauthorized purchases made before the issuer was notified of loss or theft of a credit card, unless the contract provides otherwise. *Rayor v. Affiliated Credit Bureau, Inc.*, 169 Colo. 353, 455 P.2d 859 (1969).
- 3 *Mobil Oil Corp. v. R. J. Evans Glove Co.*, 60 Misc. 2d 314, 303 N.Y.S.2d 103 (County Ct. 1969); *Union Oil Co. of Cal. v. Lull*, 220 Or. 412, 349 P.2d 243 (1960).
- 4 *Sears, Roebuck & Co. v. Duke*, 441 S.W.2d 521 (Tex. 1969).
- 5 *Gulf Refining Co. v. Williams Roofing Co.*, 208 Ark. 362, 186 S.W.2d 790, 158 A.L.R. 754 (1945).
- 6 *Texaco, Inc. v. Goldstein*, 34 Misc. 2d 751, 229 N.Y.S.2d 51 (Mun. Ct. 1962), judgment aff'd, 39 Misc. 2d 552, 241 N.Y.S.2d 495 (App. Term 1963); *Magnolia Petroleum Co. v. McMillan*, 168 S.W.2d 881 (Tex. Civ. App. Austin 1943).
- 7 *Thomas v. Central Charge Service, Inc.*, 212 A.2d 533, 15 A.L.R.3d 1083 (D.C. 1965).

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III. Rights, Duties, and Liabilities of Issuer and Cardholder


B. Cardholder's Liability for Purchases Made By Another Person

1. In General

§ 64. Authorized purchases; estoppel

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  9, 37

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[Liability of holder of credit card or plate for purchases made thereon by another person, 15 A.L.R.3d 1086](#)

Forms

[Am. Jur. Pleading and Practice Forms, Credit Cards § 10](#) (Complaint, petition, or declaration—Allegation—Holder of credit card had knowledge that person intended to charge purchases)

Where a cardholder grants another person actual authority, either express or implied, to make purchases on his or her credit card, the cardholder is liable for the authorized purchases.¹ Where the cardholder clothes the user with apparent authority to make purchases by giving the user the card, the holder's liability will extend to purchases made by the user in excess of the amount actually authorized, or for purposes other than those authorized, by the cardholder.²

There is authority holding that the cardholder's notification to the card issuer that the user has no actual authority will relieve the holder of liability for subsequent purchases by the unauthorized user of a credit card,³ while other courts take the opposite position, holding that such notification will not convert an authorized use or user into an unauthorized one so as to relieve the cardholder of liability or bring the statutory limitation on liability for unauthorized uses into play.⁴

The principle of estoppel has been applied to bar a cardholder from contesting liability for purchases made by third-party users of a credit card.⁵

Observation:

A credit cardholder may, in certain circumstances, vest a fraudulent user with the apparent authority to use a credit card, by enabling the continuous payment of the credit card charges over a period of time.⁶

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Footnotes

- 1 [Martin v. American Express, Inc.](#), 361 So. 2d 597 (Ala. Civ. App. 1978); [Standard Oil Co. v. Steele](#), 22 Ohio Misc. 2d 27, 489 N.E.2d 842 (Mun. Ct. 1985).
- 2 [Martin v. American Express, Inc.](#), 361 So. 2d 597 (Ala. Civ. App. 1978); [Neiman-Marcus Co. v. Viser](#), 140 So. 2d 762 (La. Ct. App. 2d Cir. 1962).
The debtor's housemate acted as the debtor's agent in using the debtor's credit card for even unauthorized purchases, thus rendering the debtor liable for the outstanding debt. [New Century Financial Services, Inc. v. Dennegar](#), 394 N.J. Super. 595, 928 A.2d 48 (App. Div. 2007).
A credit cardholder is liable for all charges made by an employee to whom the cardholder has given the card for a limited purpose, even where the cardholder does not specifically authorize the contested charges. [Band v. First Bankcard Center](#), 644 So. 2d 211 (La. Ct. App. 4th Cir. 1994), writ granted in part and remanded on other grounds, 650 So. 2d 738 (La. 1995).
- 3 [Cities Service Co. v. Paillet](#), 452 So. 2d 319 (La. Ct. App. 4th Cir. 1984); [Standard Oil Co. v. Steele](#), 22 Ohio Misc. 2d 27, 489 N.E.2d 842 (Mun. Ct. 1985).
- 4 [Towers World Airways Inc. v. PHH Aviation Systems Inc.](#), 933 F.2d 174 (2d Cir. 1991); [Martin v. American Express, Inc.](#), 361 So. 2d 597 (Ala. Civ. App. 1978); [Walker Bank & Trust Co. v. Jones](#), 672 P.2d 73 (Utah 1983).
- 5 [Sinclair Refining Co. v. Consolidated Van & Storage Companies](#), 192 F. Supp. 87 (N.D. Ga. 1960).
- 6 [Azur v. Chase Bank, USA, Nat. Ass'n](#), 601 F.3d 212 (3d Cir. 2010) (applying Pennsylvania law).

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

B. Cardholder's Liability for Purchases Made By Another Person

1. In General

§ 65. Negligence or bad faith of issuer, agents, or dealers

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West's Key Number Digest

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[Liability of Retailer and Its Affiliate Bank to Credit Card Issuer for Costs Arising out of Breach of Retailer's Computer Security, 51 A.L.R.6th 311](#)

[Liability of holder of credit card or plate for purchases made thereon by another person, 15 A.L.R.3d 1086](#)

Where the issuer of the credit card or the issuer's agent or subsidiary dealer is either negligent or exhibits bad faith in some manner, the holder of the card may not be liable for unauthorized purchases by third parties even if there is a contract providing for liability.¹ Thus, for example, an issuer cannot recover for purchases by a thief where the cardholder, without negligence, was unaware of the loss and use of the card by the thief, and the issuer permitted many sales slips bearing false signatures to pile up in 30 days because of inadequate data processing procedures.² A card-issuing bank also may negligently breach its duty to a cardholder when it authorizes a very large purchase on a card with a small credit limit by misinterpreting the amount of the purchase.³

Observation:

A credit card issuer seeking reimbursement from a merchant or a processing bank for losses incurred from unauthorized charges resulting from a breach of security of the merchant's credit card data system may present a claim based on negligent misrepresentation⁴ or a state's unfair or deceptive practices law.⁵ A credit card issuer also may be able to present such a claim on negligence,⁶ although other authority holds that a negligence claim for such losses is barred due to the economic loss doctrine.⁷

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Footnotes

- 1 [Humble Oil & Refining Co. v. Waters](#), 159 So. 2d 408 (La. Ct. App. 2d Cir. 1963); [Socony Mobil Oil Co. v. Greif](#), 10 A.D.2d 119, 197 N.Y.S.2d 522 (3d Dep't 1960); [Union Oil Co. of Cal. v. Lull](#), 220 Or. 412, 349 P.2d 243 (1960); [Sears, Roebuck & Co. v. Duke](#), 441 S.W.2d 521 (Tex. 1969).
- 2 [Allied Stores of New York, Inc. v. Funderburke](#), 52 Misc. 2d 872, 277 N.Y.S.2d 8 (N.Y. City Civ. Ct. 1967).
- 3 [Michigan Nat. Bank v. Olson](#), 44 Wash. App. 898, 723 P.2d 438 (Div. 3 1986).
- 4 [In re TJX Companies Retail Sec. Breach Litigation](#), 564 F.3d 489 (1st Cir. 2009), as amended on reh'g in part, (May 5, 2009) (applying Massachusetts law).
- 5 [In re TJX Companies Retail Sec. Breach Litigation](#), 564 F.3d 489 (1st Cir. 2009), as amended on reh'g in part, (May 5, 2009) (applying Massachusetts law).
- 6 [Lone Star Nat. Bank, N.A. v. Heartland Payment Systems, Inc.](#), 729 F.3d 421 (5th Cir. 2013) (applying New Jersey law).
- 7 [In re TJX Companies Retail Sec. Breach Litigation](#), 564 F.3d 489 (1st Cir. 2009), as amended on reh'g in part, (May 5, 2009) (applying Massachusetts law); [Sovereign Bank v. BJ's Wholesale Club, Inc.](#), 533 F.3d 162, 51 A.L.R.6th 657 (3d Cir. 2008) (applying Pennsylvania law).

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

B. Cardholder's Liability for Purchases Made By Another Person

2. Limitation of Liability Under Truth in Lending Act

§ 66. Generally

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West's Key Number Digest

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Trial Strategy

[Identity Theft and Other Misuses of Credit and Debit Cards, 81 Am. Jur. Proof of Facts 3d 113](#)

Forms

[Am. Jur. Legal Forms 2d § 78:21](#) (Notice of liability limit for unauthorized use of credit card— Federal Truth in Lending disclosure)

[Am. Jur. Pleading and Practice Forms, Credit Cards § 15](#) (Answer—Defense—Use of card unauthorized—Failure of issuer to comply with statutory provision)

Under the Truth in Lending Act (TILA), the holder of a credit card is liable for its unauthorized use only if:

(1) the card is an accepted credit card;¹

- (2) the liability is not in excess of \$50;²
 - (3) the card issuer gives adequate notice to the cardholder of the potential liability³ (such notice must state that the cardholder's liability will not exceed \$50 (or any lesser amount));⁴
 - (4) the card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card⁵ (for example, a telephone number, an address or both),⁶ which description may be provided on the face or reverse side of the required disclosure statement or on a separate notice accompanying such statement;⁷
 - (5) the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise;⁸ and
 - (6) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.⁹
- Except as so provided by TILA, a cardholder incurs no liability from the unauthorized use of a credit card.¹⁰ The limitations on liability for the unauthorized use of a credit card under TILA generally apply to business credit cards as well as to consumer credit cards and to all credit cardholders, including corporations as well as individuals.¹¹ If, however, 10 or more credit cards are issued by one card issuer for use by employees of a single business or organization, the card issuer and business may agree to higher liability limits, although an individual employee may not be held liable for more than \$50.¹²

The provision of TILA, limiting a credit cardholder's liability for unauthorized use of the credit card to \$50, does not give the cardholder a right to reimbursement for any payment the cardholder has made to the credit card company for unauthorized charges.¹³

Definition:

"Unauthorized use" means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.¹⁴

Observation:

The underlying policy of TILA in limiting the liability of a credit cardholder is to protect credit cardholders against losses due to theft or fraudulent use of credit cards on the theory that the card issuer is in a better position to prevent such losses.¹⁵ TILA, however, does not impose any obligation on the issuers of credit cards to pay the costs associated with the unauthorized or fraudulent use of credit cards; it simply limits the liability of cardholders, under certain circumstances, to a maximum of \$50 for unauthorized charges.¹⁶

Footnotes

- 1 15 U.S.C.A. § 1643(a)(1)(A).
As to the definition of an "accepted credit card," see § 2.
- 2 15 U.S.C.A. § 1643(a)(1)(B).
- 3 15 U.S.C.A. § 1643(a)(1)(C).
- 4 12 C.F.R. § 226.12(b)(2)(ii).
- 5 15 U.S.C.A. § 1643(a)(1)(D).
- 6 12 C.F.R. § 226.12(b)(2)(ii).
- 7 15 U.S.C.A. § 1643(a)(1)(D).
- 8 15 U.S.C.A. § 1643(a)(1)(E).
- 9 15 U.S.C.A. § 1643(a)(1)(E).
A credit card issuer did not provide a method whereby the user of the card could be identified as a person authorized to use it, and thus, the card issuer did not sustain its burden of showing that the cardholder was liable for the unauthorized use of the card to purchase train tickets, where a criminal investigator testified that the machines used to purchase the train tickets required no signature, took no photograph of the purchaser, and did not identify the purchaser by any other means. *Crestar Bank, N.A. v. Cheevers*, 744 A.2d 1043 (D.C. 2000).
- 10 15 U.S.C.A. § 1643(d).
- 11 *American Airlines, Inc. v. Remis Industries, Inc.*, 494 F.2d 196 (2d Cir. 1974); *Credit Card Service Corp. v. F.T.C.*, 495 F.2d 1004 (D.C. Cir. 1974).
- 12 15 U.S.C.A. § 1645.
The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association. 15 U.S.C.A. § 1602(d).
- 13 *Azur v. Chase Bank, USA, Nat. Ass'n*, 601 F.3d 212 (3d Cir. 2010).
- 14 15 U.S.C.A. § 1602(p).
- 15 *Minskoff v. American Exp. Travel Related Services Co., Inc.*, 98 F.3d 703, 30 U.C.C. Rep. Serv. 2d 999 (2d Cir. 1996).
- 16 *Sovereign Bank v. BJ's Wholesale Club, Inc.*, 533 F.3d 162, 51 A.L.R.6th 657 (3d Cir. 2008).

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

B. Cardholder's Liability for Purchases Made By Another Person

2. Limitation of Liability Under Truth in Lending Act

§ 67. Notice by cardholder to issuer

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West's Key Number Digest, Consumer Credit  9, 32, 37

Forms

[Am. Jur. Legal Forms 2d §§ 78:23, 78:24](#) (Cardholder's report of lost or stolen credit card)

[Am. Jur. Legal Forms 2d § 78:27](#) (Cardholder's notice to issuer—Unauthorized use of card)

[Am. Jur. Pleading and Practice Forms, Credit Cards §§ 12, 13](#) (Answer—Defense—Written notification of lost or stolen credit card)

A card issuer has been properly notified of the unauthorized use of a credit card by the cardholder, in order that the cardholder may limit his or her liability for such unauthorized use under the Truth in Lending Act, when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.¹

Although it has been held that an oral notification will not limit a cardholder's liability for unauthorized purchases where the holder's contract with the card issuer requires written notification,² federal regulation provides that notification may be given, at the option of the person giving it, in person, by telephone, or in writing.³ Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.⁴

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Footnotes

- 1 [15 U.S.C.A. § 1643\(a\)\(2\).](#)
The notification provided to a credit card issuer by a purported debtor and her investigator of the names of the law enforcement personnel who were investigating the fraudulent use of the purported debtor's name and credit was sufficient to notify the issuer of the unauthorized use of the credit card. [Mattly v. Spiegel, Inc.](#), 19 S.W.3d 890 (Tex. App. Houston 14th Dist. 2000).
- 2 [Uni Serv Corp. v. Vitiello](#), 53 Misc. 2d 396, 278 N.Y.S.2d 969 (N.Y. City Civ. Ct. 1967).
- 3 [12 C.F.R. § 226.12\(b\)\(3\).](#)
- 4 [12 C.F.R. § 226.12\(b\)\(3\).](#)

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III. Rights, Duties, and Liabilities of Issuer and Cardholder

B. Cardholder's Liability for Purchases Made By Another Person

2. Limitation of Liability Under Truth in Lending Act

§ 68. Voluntarily transferred cards

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Under the Truth in Lending Act (TILA) provision setting out conditions for limiting the liability of a holder of a credit card,¹ a cardholder is protected from liability only from "unauthorized use" and is not protected from misuse by an authorized user.² Where purchases are authorized by a cardholder, the holder having sold or given another the card with knowledge that the other intended to use it without making payment, the issuer may seek full payment from the cardholder.³ Further, where a cardholder, who is under no compulsion by fraud, duress, or otherwise, voluntarily permits the use of his or her credit card by another person, the cardholder has authorized the use of that card and is thereby responsible for any charges as a result of that use, even if the cardholder orally requests that the other person not charge over a certain amount.⁴ There is authority holding that notification of the issuer that one to whom a cardholder has voluntarily given his or her card has or is expected to use the card in excess of the actual authority granted by the cardholder will render subsequent such uses unauthorized so as to invoke the limitation on liability.⁵ Other authority, however, concludes that notice to the issuer is irrelevant as to whether a use is unauthorized,⁶ and the cardholder need only surrender the card and close the account.⁷

Observation:

Cases in which courts have concluded that notification of the issuer sufficed to convert a use clothed in apparent authority into an unauthorized use for purposes of TILA have involved oil company or other limited-use cards,⁸ while cases in which such notification was held irrelevant have involved bank or other general-use cards.⁹ Where notification has been held insufficient to render subsequent third-party uses unauthorized under TILA, it has been reasoned that it would be totally unrealistic to burden

a card issuer with the obligation to convey to numerous merchants whatever limitations the cardholder had placed on the user's authority, but that this burden may be less onerous in the context of oil company or other limited-use cards, where the issuer has continuing significant relationships with a limited class of merchants, than with respect to bank or other general-use cards, where the class of merchants involved may be large and diverse and include merchants with whom the issuer's only relationship is the credit card arrangement.¹⁰

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Footnotes

- 1 15 U.S.C.A. § 1643, generally discussed in § 66.
- 2 American Exp. Travel Related Services Co., Inc. v. Web, Inc., 261 Ga. 480, 405 S.E.2d 652 (1991).
As to the definition of "unauthorized use," see § 66.
- 3 U.S. v. Kasper, 483 F. Supp. 1208 (E.D. Pa. 1980).
- 4 Martin v. American Express, Inc., 361 So. 2d 597 (Ala. Civ. App. 1978).
A credit card customer was not entitled to the protection of TILA's \$50 limit on liability for credit card charges by a secondary cardholder, even though the amount charged was far greater than customer's credit limit, where the customer authorized issuance of a secondary credit card and received a monetary benefit of \$25 a month in return for its issuance. Citibank (South Dakota), N.A. v. Gifelman, 63 Conn. App. 188, 773 A.2d 993 (2001).
- 5 Cities Service Co. v. Paillet, 452 So. 2d 319 (La. Ct. App. 4th Cir. 1984); Standard Oil Co. v. Steele, 22 Ohio Misc. 2d 27, 489 N.E.2d 842 (Mun. Ct. 1985).
- 6 Towers World Airways Inc. v. PHH Aviation Systems Inc., 933 F.2d 174 (2d Cir. 1991); Walker Bank & Trust Co. v. Jones, 672 P.2d 73 (Utah 1983).
- 7 Walker Bank & Trust Co. v. Jones, 672 P.2d 73 (Utah 1983).
- 8 Cities Service Co. v. Paillet, 452 So. 2d 319 (La. Ct. App. 4th Cir. 1984); Standard Oil Co. v. Steele, 22 Ohio Misc. 2d 27, 489 N.E.2d 842 (Mun. Ct. 1985).
- 9 Towers World Airways Inc. v. PHH Aviation Systems Inc., 933 F.2d 174 (2d Cir. 1991).
- 10 Towers World Airways Inc. v. PHH Aviation Systems Inc., 933 F.2d 174 (2d Cir. 1991).

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Janice Holben, J.D.

III. Rights, Duties, and Liabilities of Issuer and Cardholder

B. Cardholder's Liability for Purchases Made By Another Person

2. Limitation of Liability Under Truth in Lending Act

§ 69. Voluntarily transferred cards—Apparent authority

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  9, 32, 37

Forms

[Am. Jur. Pleading and Practice Forms, Credit Cards § 62](#) (Complaint, petition, or declaration—Allegation—Apparent authority of third person to use defendant's credit card)

The Truth in Lending Act (TILA) provision setting out conditions for limiting the liability of a holder of a credit card¹ precludes a finding of apparent authority, as would impose liability on a credit cardholder for disputed charges, where the transfer of the card was without the cardholder's consent, as in cases involving theft, loss, or fraud.² While the acquisition of a credit card through fraud or theft cannot be said to occur under the apparent authority of the cardholder, this should not be interpreted to preclude a finding of apparent authority for the subsequent use of a credit card so obtained.³ Accordingly, the negligent acts or omissions of a cardholder may create apparent authority to use a card in a person who obtained the card through theft or fraud, for purposes of TILA.⁴ The apparent authority of use created through a credit cardholder's negligence, however, does not retroactively authorize charges incurred prior to the negligent acts that created the apparent authority of the user.⁵

The failure of a cardholder to examine its monthly billing statements for unauthorized uses does not by itself create in another the apparent authority to use the holder's credit card,⁶ although once a credit cardholder receives a statement that reasonably puts him or her on notice that one or more fraudulent charges have been made, the cardholder cannot thereafter claim lack of

knowledge of such charges.⁷ When the cardholder repeatedly makes monthly payments on statements that reveal unauthorized uses, apparent authority in the person making the unauthorized uses is established, and such charges are not "unauthorized charges" within the meaning of TILA and the cardholder sacrifices any protections from liability for unauthorized use.⁸ Thus, a cardholder's negligence in not examining the holder's monthly statements from the credit card issuer removes the case from the statutory limit on cardholder liability under TILA.⁹

Observation:

A credit cardholder's request that the card issuer send a reissued card to the cardholder's friend's address has been held not to clothe the third party with apparent authority of use for purposes of imposing liability on the cardholder in excess of the statutory limitation.¹⁰

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Footnotes

- 1 15 U.S.C.A. § 1643, generally discussed in § 66.
- 2 *Minskoff v. American Exp. Travel Related Services Co., Inc.*, 98 F.3d 703, 30 U.C.C. Rep. Serv. 2d 999 (2d Cir. 1996); *Crestar Bank, N.A. v. Cheevers*, 744 A.2d 1043 (D.C. 2000).
- 3 *Minskoff v. American Exp. Travel Related Services Co., Inc.*, 98 F.3d 703, 30 U.C.C. Rep. Serv. 2d 999 (2d Cir. 1996).
- 4 *Minskoff v. American Exp. Travel Related Services Co., Inc.*, 98 F.3d 703, 30 U.C.C. Rep. Serv. 2d 999 (2d Cir. 1996).
- 5 *Minskoff v. American Exp. Travel Related Services Co., Inc.*, 98 F.3d 703, 30 U.C.C. Rep. Serv. 2d 999 (2d Cir. 1996); *Permobil, Inc. v. American Exp. Travel Related Services Co., Inc.*, 571 F. Supp. 2d 825 (M.D. Tenn. 2008).
- 6 *DBI Architects, P.C. v. American Express Travel-Related Services Co., Inc.*, 388 F.3d 886 (D.C. Cir. 2004).
- 7 *Minskoff v. American Exp. Travel Related Services Co., Inc.*, 98 F.3d 703, 30 U.C.C. Rep. Serv. 2d 999 (2d Cir. 1996).
- 8 *Minskoff v. American Exp. Travel Related Services Co., Inc.*, 98 F.3d 703, 30 U.C.C. Rep. Serv. 2d 999 (2d Cir. 1996); *DBI Architects, P.C. v. American Express Travel-Related Services Co., Inc.*, 388 F.3d 886 (D.C. Cir. 2004).
- 9 *Transamerica Ins. Co. v. Standard Oil Co. (Indiana)*, 325 N.W.2d 210 (N.D. 1982).
- 10 *Universal Bank v. McCafferty*, 88 Ohio App. 3d 556, 624 N.E.2d 358 (9th Dist. Summit County 1993).

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§ 70. Burden of proof

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In any action by a card issuer to enforce liability for the use of a credit card under the Truth in Lending Act, the burden of proof is upon the card issuer to show that the use was authorized, or if the use was unauthorized, that the conditions of liability for the unauthorized use have been met.¹ This burden, however, may not apply when the action is brought by the cardholder to recover payments made to the issuing bank for allegedly unauthorized uses of a card.²

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Footnotes

- ¹ 15 U.S.C.A. § 1643(b).
The card issuer failed to meet its burden of showing the authorized use of a credit card. [Crestar Bank, N.A. v. Cheevers](#), 744 A.2d 1043 (D.C. 2000); [Michigan Nat. Bank v. Olson](#), 44 Wash. App. 898, 723 P.2d 438 (Div. 3 1986).
As to the conditions of liability for the unauthorized use of a credit card under the Truth in Lending Act, see § 66.
- ² [Band v. First Bankcard Center](#), 644 So. 2d 211 (La. Ct. App. 4th Cir. 1994), writ granted in part and remanded on other grounds, 650 So. 2d 738 (La. 1995).

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§ 71. Effect of liability imposed by other laws or by agreement with issuer

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West's Key Number Digest, Consumer Credit  9, 32, 37

The Truth in Lending Act provision governing the liability of a holder of a credit card¹ does not impose liability upon a cardholder for the unauthorized use of a credit card in excess of his or her liability for such use under other applicable law or under any agreement with the card issuer.² If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided by federal regulation, the lesser liability will govern.³

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Footnotes

- ¹ 15 U.S.C.A. § 1643, discussed generally in § 66.
- ² 15 U.S.C.A. § 1643(c).
- ³ 12 C.F.R. § 226.12(b)(4).

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A.L.R. Index, Consumer Protection

A.L.R. Index, Credit Cards

A.L.R. Index, Truth in Lending

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§ 72. Generally

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West's Key Number Digest

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Trial Strategy

[Identity Theft and Other Misuses Of Credit And Debit Cards, 81 Am. Jur. Proof of Facts 3d 113](#)

Forms

[Am. Jur. Pleading and Practice Forms, Credit Cards §§ 4 to 18](#) (Forms related to actions brought by issuer of credit card)

[Am. Jur. Pleading and Practice Forms, Credit Cards §§ 20 to 60](#) (Forms related to actions brought by holder of credit card)

An action may be instituted by the issuer of a credit card against a credit cardholder for unpaid balances due¹ or for breach of the credit card agreement.² In such an action, a cardholder's silence constitutes a tacit admission of the correctness of the accounts.³

An action may be instituted by a credit cardholder against a credit card issuer for the unsolicited issuance of a credit card in the plaintiff's name, and such an action states a cause of action in negligence against the card issuer, although it does not state claims under either a theory of strict and absolute liability or under the doctrine of nuisance.⁴ A claim against a credit card issuer for "negligent enablement of impostor fraud" by persons in whose names an impostor has obtained credit cards, however,

has not been recognized, where the issuer had no special relationship either with the impostor who stole the plaintiffs' credit information and fraudulently obtained the credit cards or with the plaintiffs with whom they stood simply in a creditor/debtor relationship.⁵ Further, credit cardholders do not state a claim for either common law fraud or breach of contract against the issuer of a credit card, based on the issuer's policy of not imposing finance charges for a fixed period beyond the disclosed grace period, where the issuer's disclosures comply with the Federal Truth in Lending Act.⁶

Observation:

An alleged lack of subject matter jurisdiction for a trial court to preside over a credit card company's action to recover a debt may not be based on a challenge to the sufficiency of the evidence to support the finding that the cardholder was responsible for the debt.⁷

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Footnotes

- 1 [First Nat. Bank of Commerce v. Seale](#), 484 So. 2d 148 (La. Ct. App. 3d Cir. 1986); [Fifth Third Bank/Visa v. Gilbert](#), 17 Ohio Misc. 2d 14, 478 N.E.2d 1324 (Mun. Ct. 1984); [Wenk v. City Nat. Bank](#), 613 S.W.2d 345 (Tex. Civ. App. Tyler 1981).
- 2 [Citibank \(S.D.\) N.A. v. Roberts](#), 304 A.D.2d 901, 757 N.Y.S.2d 365 (3d Dep't 2003).
Evidence in the record of a credit card issuer's breach of contract action failed to support the cardholder's contention that the issuer intentionally allowed the cardholder to exceed her spending limit in order to assess additional fees, as the cardholder requested and was approved for the increased spending limit on a number of occasions, and the cardholder failed to make the required monthly payments which caused interest charges to accumulate on the account as provided by the contract. [WV Dept. of Health & Human Resources Employees Federal Credit Union v. Tennant](#), 215 W. Va. 387, 599 S.E.2d 810 (2004).
- 3 [Wenk v. City Nat. Bank](#), 613 S.W.2d 345 (Tex. Civ. App. Tyler 1981).
- 4 [Bradshaw v. Michigan Nat. Bank](#), 39 Mich. App. 354, 197 N.W.2d 531 (1972).
- 5 [Polzer v. TRW, Inc.](#), 256 A.D.2d 248, 682 N.Y.S.2d 194 (1st Dep't 1998).
- 6 [Price v. FCC Nat. Bank](#), 285 Ill. App. 3d 661, 220 Ill. Dec. 647, 673 N.E.2d 1068 (1st Dist. 1996).
- 7 [Citibank \(South Dakota\) N.A. v. Edwards](#), 147 S.W.3d 810 (Mo. Ct. App. W.D. 2004).

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§ 73. Statute of limitations

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[When statute of limitations commences to run on action under state deceptive trade practice or consumer protection acts, 18 A.L.R.4th 1340](#)

[What statute of limitations governs action arising out of transaction consummated by use of credit card, 2 A.L.R.4th 677](#)

Forms

[Am. Jur. Pleading and Practice Forms, Credit Cards § 57 \(Motion—To dismiss—By issuer—Expiration of limitations period\)](#)

In accordance with the general view that the nature of the cause of action, or of the rights sued on, and not the form of the action is the test to determine the applicable statute of limitations, the courts, in cases involving credit card use, have analyzed the nature of the cause of action, viewing it as either a loan based on a contractual obligation and governed by the statute of limitations governing actions on contract¹ or as an open account governed by the period provided for open accounts.²

An action on a credit card account containing a disputed debt is not subject to the provisions of the Federal Fair Credit Billing Act,³ where oral notice by the customer does not trigger the Act, and the credit card company's voluntary compliance with that Act's provisions has no effect on the running of the statute of limitations in the company's breach of contract action against the customer.⁴

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Footnotes

- 1 [Beasley v. Wells Fargo Bank](#), 235 Cal. App. 3d 1383, 1 Cal. Rptr. 2d 446 (1st Dist. 1991); [Harris Trust and Sav. Bank v. McCray](#), 21 Ill. App. 3d 605, 316 N.E.2d 209, 14 U.C.C. Rep. Serv. 1338, 2 A.L.R.4th 671 (1st Dist. 1974).
- 2 [Carte Blanche Corp. v. Pappas](#), 216 So. 2d 917 (La. Ct. App. 2d Cir. 1968).
- 3 15 U.S.C.A. §§ 1666 to 1666j.
As to the Federal Fair Credit Billing Act, generally, see [Am. Jur. 2d, Consumer and Borrower Protection](#) §§ 96 to 99.
- 4 [Himelfarb v. American Exp. Co.](#), 301 Md. 698, 484 A.2d 1013 (1984).

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§ 74. Nondischargeability of charges in bankruptcy

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[Credit card debt as nondischargeable under Bankruptcy Code provision concerning nondischargeability of individual debt obtained through false pretenses, false representation, or actual fraud, other than statement respecting debtor's or insider's financial condition \(11 U.S.C.A. s 523\(a\)\(2\)\(A\)\), 158 A.L.R. Fed. 189](#)

The Bankruptcy Code provides that a discharge under the Code does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.¹ This provision has been used to bar the dischargeability of credit card charges in bankruptcy.²

In applying the Bankruptcy Code's exception to discharge provision to credit card debt, some courts use an assumption of risk approach, which holds that unless a credit card company has revoked the card, it assumes the risk that debtors who do not have the ability to pay will use the card.³ Under this approach, only those charges made after the credit card has been revoked will be declared nondischargeable in bankruptcy.⁴ Other courts use an implied representation approach, which holds that each time a debtor uses a credit card the debtor impliedly represents that the debtor has the intention to repay the credit extended or charges incurred,⁵ and only if the debtor has no intention to repay the charges when incurred will the charges be declared nondischargeable in bankruptcy.⁶ Still other courts employ a totality of the circumstances approach, and consider several factors

in determining whether the bankruptcy debtor was guilty of false pretenses or fraud in using the credit card, thereby resulting in the charges being nondischargeable in bankruptcy.⁷ In analyzing a debtor's intent under the totality of circumstances approach in credit card nondischargeability proceedings, courts may consider such factors as: the length of time between the charges made and the filing of bankruptcy; whether an attorney has been consulted concerning the filing of bankruptcy before the charges were made; the number of charges made; the amount of the charges; the financial condition of the debtor at the time the charges are made; whether the charges were above the credit limit of the account; whether the debtor made multiple charges on the same day; whether the debtor was employed; the debtor's prospects for employment; the financial sophistication of the debtor; whether there was a sudden change in the debtor's buying habits; and whether the purchases were made for luxuries or necessities.⁸ Under such approach, proof of only one or two of the several factors, if particularly egregious, may be sufficient to find an intent to deceive,⁹ although a predominance of the factors alone does not always create a conclusive presumption of fraudulent intent.¹⁰

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Footnotes

- 1 11 U.S.C.A. § 523(a)(2)(A).
- 2 *Comerica Bank-Midwest v. Kouloumbis*, 69 B.R. 229 (N.D. Ill. 1986); *In re Dougherty*, 143 B.R. 23 (Bankr. E.D. N.Y. 1992); *In re Hale*, 274 B.R. 220 (Bankr. E.D. Va. 2001).
- 3 *In re Alnajjar*, 276 B.R. 844 (Bankr. N.D. Ohio 2002).
- 4 *In re Alnajjar*, 276 B.R. 844 (Bankr. N.D. Ohio 2002).
Implied representations that the debtor allegedly makes by means of the use of a credit card are not sufficient to except the credit card debt from discharge on a false pretenses or false representation theory, where the credit card issuer has not unequivocally and unconditionally revoked the debtor's right to use the credit card, or the debtor is not aware of that revocation. *In re Quinn*, 492 B.R. 341 (Bankr. N.D. Ga. 2013).
- 5 *In re Collier*, 344 B.R. 804 (Bankr. N.D. Miss. 2006); *In re Alnajjar*, 276 B.R. 844 (Bankr. N.D. Ohio 2002).
- 6 *In re Alnajjar*, 276 B.R. 844 (Bankr. N.D. Ohio 2002).
The debtor's use of a credit card to make purchases or to obtain a cash advance is an implied, not an actual, representation of the debtor's intent to repay the credit card debt, which, if the debtor did not actually have such an intent at the time this implied representation was made, may provide a basis to except the resulting debt from discharge on a false pretenses, false representation, or actual fraud theory. *In re Ritter*, 404 B.R. 811 (Bankr. E.D. Pa. 2009).
- 7 *In re Alnajjar*, 276 B.R. 844 (Bankr. N.D. Ohio 2002).
A debtor who, while laid off from a saw mill which regularly employed the debtor during the nonwinter months, had every expectation of returning to work, as he had done in the past when downtime for his employer's business ended, was not shown to have acted with fraudulent intent in using his credit card to make nonluxury purchases that he did, especially where the debtor made his minimum monthly payments on the credit card debt prior to filing for bankruptcy when, contrary to his plans and employment history, he was unable to return to work at the saw mill; accordingly, the credit card debt would not be excepted from discharge on a false pretenses, false representation or actual fraud theory. *In re May*, 428 B.R. 393 (Bankr. W.D. Mich. 2010), decision aff'd, 448 B.R. 197 (W.D. Mich. 2011).
- 8 *In re Nelson*, 503 B.R. 466 (Bankr. C.D. Cal. 2013).
- 9 *In re Cloud*, 107 B.R. 156 (N.D. Ill. 1989); *In re Hansbury*, 128 B.R. 320 (Bankr. D. Mass. 1991).
- 10 *In re Dougherty*, 143 B.R. 23 (Bankr. E.D. N.Y. 1992).

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C. Practice and Procedure

§ 75. Asserting claims and defenses against credit card issuer

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Forms

[Am. Jur. Legal Forms 2d § 78:22](#) (Notice of procedure subjecting issuer to defenses available to cardholder against retailer—Federal Truth in Lending disclosure)

[Am. Jur. Legal Forms 2d § 78:28](#) (Cardholder's notice to issuer—Cardholder's defense against retailer for specific charged purchase)

[Am. Jur. Legal Forms 2d § 78:29](#) (Cardholder's demand on retailer to obtain satisfaction on disputed credit card transaction)

[Am. Jur. Pleading and Practice Forms, Credit Cards § 53](#) (Answer—Defense—Issuer not subject to defenses against retailer)

[Am. Jur. Pleading and Practice Forms, Truth in Lending and Consumer Credit Protection § 125](#) (Answer—Defense—Credit card issuer not subject to claims and defenses of cardholder against merchant—Transaction occurred outside specified geographical area)

Under the Truth in Lending Act (TILA), a credit card issuer is subject to all claims and defenses, except tort claims, arising out of any transaction in which the credit card is used as a method of payment or extension of credit if the cardholder has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; the amount of the initial transaction exceeds \$50; and the place where the initial transaction occurred was in the same state as the mailing address previously provided by the cardholder or was within 100 miles from such address.¹ The limitations with regard to the amount of the initial transaction and the place where the initial transaction occurred, with respect to a cardholder's right to assert claims and defenses against a card issuer, however, are not applicable to any transaction in which the person honoring the credit card is the same person as the card issuer, is controlled by the card issuer, is under direct

or indirect common control with the card issuer, is a franchised dealer in the card issuer's products or services, or has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.² Furthermore, the fact that a card issuer is subject to all defenses if a transaction occurred less than 100 miles from the cardholder's address does not automatically presume a cardholder gives up all defenses should the transaction take place at a distance of greater than 100 miles from the cardholder's mailing address, and, the cardholder can clearly assert a defense which arose due to the alleged failure of the card issuer itself to comply with statutory requirements regarding correction of an obvious billing error.³

When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer-credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute.⁴ The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.⁵ If the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer may not report that amount as delinquent until the dispute is settled or judgment is rendered.⁶ The cardholder's ability to assert claims and defenses against a bank issuing a credit card is only as good as the cardholder's ability to claim against the merchant.⁷ The fact that federal regulation⁸ limits state law tort claims, however, does not prevent a cardholder from bringing tort claims against a card issuer where the claims do not relate to a dispute with a merchant regarding products or services, since such provision does not apply where a cardholder alleges the unauthorized use of a credit card, rather than a dispute over products or services.⁹

Practice Tip:

Under TILA, the question of where a transaction occurred, as in mail order cases, is to be determined under state or other applicable law.¹⁰ Furthermore, any state law permitting customers to assert claims and defenses against the card issuer are not preempted, regardless of whether the place of the transaction is at issue.¹¹

Observation:

The fact that the transaction for which an issuing bank was attempting to collect charges was for a business or commercial purpose did not preclude the credit cardholder from asserting a nondelivery defense under TILA, in the issuing bank's action to collect charges on the credit card for merchandise that was never delivered, as the relevant transaction for purposes of TILA was the initial extension of credit to the cardholder, the credit card account was primarily opened for consumer purposes, the initial transaction thus created an open-end consumer credit plan, and defenses under TILA apply to any transaction in which a credit card was used to make a purchase on an open-end consumer credit plan.¹² Even if TILA does not apply, a credit cardholder may still be entitled under state law to assert the defense that a merchant did not deliver merchandise charged on a credit card, in an issuing bank's action to collect charges on a credit card for merchandise that was never delivered, where the issuing bank is the assignee of the merchant who failed to deliver the merchandise, as under the common law any defense valid against an assignor is valid against the assignee, and under the Uniform Commercial Code, the rights of an assignee are subject to any defense or claim in recoupment arising from the transaction giving to the contract.¹³

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Footnotes

- 1 15 U.S.C.A. § 1666i(a).
A credit card issuer did not owe the cardholder a duty to investigate his dispute with the vendor, and to refuse the vendor's charge if satisfied that the cardholder was in the right, where the purchase was not made in the cardholder's home state or within 100 miles of his mailing address, as stated on the back of the issuer's billing statements. *American Express Travel Related Services Co., Inc. v. Haber*, 295 A.D.2d 159, 742 N.Y.S.2d 634 (1st Dep't 2002).
- 2 15 U.S.C.A. § 1666i(a).
- 3 *Lincoln First Bank, N.A. v. Carlson*, 103 Misc. 2d 467, 426 N.Y.S.2d 433 (Sup 1980).
- 4 12 C.F.R. § 226.12(c)(1).
- 5 12 C.F.R. § 226.12(c)(1).
- 6 12 C.F.R. § 226.12(c)(2).
- 7 *Izraelewitz v. Manufacturers Hanover Trust Co.*, 120 Misc. 2d 125, 465 N.Y.S.2d 486 (N.Y. City Civ. Ct. 1983).
- 8 12 C.F.R. § 226.12(c)(1).
- 9 *Permobil, Inc. v. American Exp. Travel Related Services Co., Inc.*, 571 F. Supp. 2d 825 (M.D. Tenn. 2008).
- 10 *Izraelewitz v. Manufacturers Hanover Trust Co.*, 120 Misc. 2d 125, 465 N.Y.S.2d 486 (N.Y. City Civ. Ct. 1983).
When a sale is made as the result of a telephone solicitation to a customer at the customer's home, the transaction takes place where the customer utters his or her acceptance, that is, at the customer's home. *In re Standard Financial Management Corp.*, 94 B.R. 231, 7 U.C.C. Rep. Serv. 2d 1561 (Bankr. D. Mass. 1988) (holding that 100-mile limitation did not apply under the facts of the case).
- 11 *Izraelewitz v. Manufacturers Hanover Trust Co.*, 120 Misc. 2d 125, 465 N.Y.S.2d 486 (N.Y. City Civ. Ct. 1983).
- 12 *Citibank (South Dakota), N.A. v. Mincks*, 135 S.W.3d 545 (Mo. Ct. App. S.D. 2004).
- 13 *Citibank (South Dakota), N.A. v. Mincks*, 135 S.W.3d 545 (Mo. Ct. App. S.D. 2004).

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§ 76. Asserting claims and defenses against credit card issuer—Limitation of amount

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  8.1, 9, 30, 32, 34, 37

The amount of claims or defenses asserted by a credit cardholder against a credit card issuer under the Truth in Lending Act may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense.¹ For the purpose of determining the amount of credit outstanding, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.²

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Footnotes

¹ 15 U.S.C.A. § 1666i(b).

² 15 U.S.C.A. § 1666i(b).

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20 Am. Jur. 2d Credit Cards and Charge Accounts Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

Credit Cards and Charge Accounts

Janice Holben, J.D.

[Topic Summary](#)**Correlation Table****Credit Cards and Charge Accounts**

2005	2015
1	§1
1	§2
1	§3
1	§4
1	§5
2	§1
2	§2
2	§4
2	§5
2	§7
3	§6
4	§8
4	§10
4	§55
5	§15
5	§16
5	§17
5	§20
5	§28
5	§29
6	§30
7	§31
8	§9
9	§32
9	§33
9	§34
9	§35
9	§36
9	§37
9	§38
10	§33
11	§33
12	§32
13	§33
14	§39
15	DELETED
16	§40
17	§41
18	§42
19	§43

20	§44
21	§45
21	§46
22	§47
23	§48
24	§49
25	§50
26	§51
27	§52
28	§53
29	§54
30	§55
30	§56
30	§57
31	§58
32	§60
33	§61
34	§62
35	§63
36	§64
37	§65
38	§66
39	§66
40	§67
41	§68
42	§69
43	§70
44	§71
45	§72
46	§73
47	§74
48	§75
48	§76

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